

No. 737 of 1867.—The following promotions are made in the undermentioned Corps of the Native Army:—

Corps.	Rank and Names.	To what rank promoted.	From what date.	In whose room.
9th Regiment, Native Infantry	Jemadar Madho Singh ...	Subadar ...	1st May 1867	Ramphul Singh, invalided.
	Ditto Ujoodhya Singh	Ditto ...	Ditto ...	Ghunda Singh, invalided.
	Havildar Kalka Singh ...	Jemadar ...	Ditto ...	Madho Singh, promoted.
	Ditto Meer Kassim Ally	Ditto ...	Ditto ...	Ujoodhya Singh, promoted.
	Ditto Mehribuksh Khan	Ditto ...	Ditto ...	Pahlwan Khan, invalided.
1st Goorkha Regiment	Subadar Nain Sing ...	Subadar-Major ...	3rd May 1867	Jusseah, invalided.

No. 738 of 1867.—The undermentioned Officers have reported their departure on the dates specified opposite to their names:—

Major W. Fane, of the Madras Staff Corps, Commandant, 10th Bengal Cavalry (Lancers), G. G. O. No. 536 of 1867	Baroda, 14th May 1867, from Bombay.
Major-General J. Welchman, C. B., of Infantry, Commanding Presidency Division, G. G. O. No. 697 of 1867	
Lieutenant-Colonel W. D. Morgan, of the Bengal Staff Corps, G. G. O. No. 717 of 1867	
Lieutenant-Colonel D. C. Vanrenen, of the Royal Artillery, G. G. O. No. 649 of 1867	Candia, 10th July 1867.
Lieutenant T. Pearson, of the late 60th Regiment, Native Infantry, G. G. O. No. 728 of 1867	
Lieutenant K. C. Pye, of the Royal Engineers, G. G. O. No. 697 of 1867	

No. 739 of 1867.—The following promotions and alterations of rank are made, subject to Her Majesty's approval:—

BREVET:
Promotions.

Rank, Names, and Corps.	To what rank promoted.	From what date.	In succession to.
Major Charles John Stanley Gough, v. c., Bengal Cavalry ...	Lieut.-Colonel	11th March 1867	{ Major-General J. E. G. Morris, Bombay Infantry, deceased.
Captain Charles Metcalfe Young, Royal (Bengal) Artillery ...	Major		
Major Charles William Miles, Bengal Staff Corps ...	Lieut.-Colonel	18th March 1867	{ Major-General W. P. Macdonald, Madras Staff Corps, deceased.
Captain Malcolm Kemp Bourne, Madras Infantry ...	Major		
Major Alfred Butler Little, Bombay Staff Corps ...	Lieut.-Colonel	25th March 1867	{ Major-General J. C. Henth, Bombay Infantry, deceased.
Captain William Babington Peile, Bengal Infantry ...	Major		
Major Edmund Antoine Henry Bacon, Bombay Staff Corps ...	Lieut.-Colonel	5th April 1867	{ Major-General J. Moule, Bengal Infantry, deceased.
Captain William Turton Fagan, Bengal Staff Corps ...	Major		

Alterations of Rank.

Rank, Names, and Corps.	To rank from.	In succession to.
Lieutenant-Colonel Frederick William Lambert, Bengal Infantry ...	1st March 1867	{ General C. A. G. Wallington, Bengal Infantry, deceased.
Major Henry Pelham Close, Bombay Staff Corps		

No. 740 of 1867.—The undermentioned Soldier of Her Majesty's service is permitted to reside and draw his pay in India, as an out-pensioner of Chelsea Hospital, in accordance with the Royal Warrant of the 23rd July 1864, pending a reference to the Home authorities as to the amount of his pension:—

Private George Lackey, 107th Foot.

No. 741 of 1867.—Honorary Captain Isaac James Corcoran, Deputy Commissary of Ordnance, is allowed leave of absence for seven months from 1st August 1867, to remain at the Presidency on medical certificate.

No. 742 of 1867.—The following temporary appointments are made:—

Ordnance Commissariat Department:

Captain F. V. Eyre, 3rd Class, Officiating as 2nd Class Commissary, to officiate as 1st Class Commissary of Ordnance	From the 8th June 1867, during the absence on sick leave of Major J. C. Griffiths, 1st Class Commissary of Ordnance, or until further orders.
Lieutenant J. A. S. Colquhoun, 3rd Class Commissary, to officiate as 2nd Class Commissary of Ordnance	

No. 743 of 1867.—His Excellency the Governor General in Council is pleased to make the following appointment:—

Quarter-Master General's Department:

Captain A. W. J. Montgomerie, of Her Majesty's 20th Hussars, to be an Officiating Deputy Assistant Quarter-Master General to complete the Establishment, *vice* Lieutenant C. P. Stone, who vacates on obtaining general leave of absence.

H. W. NORMAN, Col.,
Secy. to the Govt. of India.

PUBLIC WORKS DEPARTMENT.

NOTIFICATIONS.

Establishment.

Simla, the 13th July 1867.

No. 190.

The appointment of Lieutenant G. F. O. Boughey, R. E., to the Public Works Department, as an Assistant Engineer of the 2nd Grade (Notification No. 145, dated 27th May 1867), is cancelled at his own request, and his services are replaced at the disposal of the Military Department.

No. 191.

Mr. R. L. Locke has been appointed to the Public Works Department as an Assistant Engineer of the 2nd Grade, and posted to Bengal.

No. 192.

With reference to Notifications Nos. 289, dated 1st November 1866, and 168, dated 6th June 1867, the promotion of Messrs. D. Scott and A. Penny,

of the Public Works Department, Oudh, to the rank of Executive Engineer, 4th Grade, is ante-dated to 1st May 1866.

The 16th July 1867.

No. 193.

Lieutenant C. Bowen, R. E., Assistant Engineer, 1st Grade, Mysore, is promoted to the rank of Executive Engineer, 4th Grade, with effect from the 5th March 1867, to fill an existing vacancy.

The 16th July 1867.

No. 194.

Lieutenant A. T. Fraser, R. E., Executive Engineer, 4th Grade, assumed charge of the 1st Division, Mhow and Nusseerabad Road, from Lieutenant J. H. Bedford, R. E., on the 24th June 1867.

The 19th July 1867.

No. 195.

Serjeant J. Maclean, Her Majesty's 42nd Foot, is appointed to the Public Works Department as an Overseer of the 1st Grade and posted to Oudh.

Railway.

The 18th July 1867.

No. 3R.

With reference to Notification No. 1R., dated 9th January 1867, the services of Captain C. H. Luard, R. E., are replaced at the disposal of the Government of Bengal in the Railway Department from the afternoon of the 8th instant, when he took over charge of the Office of Deputy Consulting Engineer from Lieutenant K. C. Pye, R. E.

Lieutenant W. A. J. Wallace, R. E., will continue to officiate as Assistant Consulting Engineer to the Government of Bengal in the Railway Department during the absence on sick leave of Lieutenant Pye, or till further orders.

Revenue—Forests.

The 17th July 1867.

No. 10F.

Mr. R. M. Adam is appointed to officiate as an Assistant Conservator of Forests in Oudh, in the room of Captain W. B. Martin, who has proceeded to England on leave.

C. H. DICKENS, Col., R. A.,
Secy. to the Govt. of India.

REVENUE SURVEY DEPARTMENT.

NOTIFICATION.

Calcutta, the 9th July 1867.

No. 31.

LEAVE OF ABSENCE.—Mr. L. Evans, Junior Sub-Assistant Revenue Surveyor, 2nd Division, Oudh, for three months from 1st instant, on medical certificate, in extension of the leave granted in Notification No. 19, dated 7th May last.

J. MACDONALD, Major,
Offg. Deputy Surveyor General.

*STATEMENT of Government Promissory Notes, enfaced for payment of Interest in London, under
on the 8th*

PARTICULARS.	3½ per cent. Loan of 1858-54.	4 per cent. Loan of 1824-25.	4 per cent. Loan of 1828-29.	4 per cent. Loan of 1832-33.	4 per cent. Loan of 1835-36.	4 per cent. Loan of 1842-43.	4 per cent. Loan of 1854-55.	4 per cent. Loan Transfer of 1865.
Balance of 22nd May 1867 ...	36,100	26,666	2,346	20,55,040	31,97,500	1,22,42,300	98,11,300	58,26,100
<i>Add—</i>								
Amount enfaced at Madras between 23rd May and 8th June 1867 ...	...	...	...	...	...	...	...	...
Amount enfaced at Bombay between 23rd May and 8th June 1867 ...	...	...	...	...	53,800	11,800	69,700	22,700
Amount enfaced at Calcutta between 23rd May and 8th June 1867 ...	...	...	...	...	...	51,500	8,300	30,000
TOTAL ...	36,100	26,666	2,346	20,55,040	32,51,800	1,23,05,600	98,89,200	58,78,800
<i>Deduct—</i>								
Amount written off in the London Registers ...	...	...	...	...	7,900	30,900	13,500	51,200
Balance on 8th June 1867 ...	36,100	26,666	2,346	20,55,040	32,43,700	1,22,74,700	98,75,700	58,27,600

PUBLIC DEBT OFFICE; }
BANK OF BENGAL,
The 20th June 1867.

*STATEMENT of Government Promissory Notes, enfaced for payment of Interest in London, under
on the 22nd*

PARTICULARS.	3½ per cent. Loan of 1858-54.	4 per cent. Loan of 1824-25.	4 per cent. Loan of 1828-29.	4 per cent. Loan of 1832-33.	4 per cent. Loan of 1835-36.	4 per cent. Loan of 1842-43.	4 per cent. Loan of 1854-55.	4 per cent. Loan Transfer of 1865.
Balance of 8th June 1867 ...	36,300	26,666	2,346	20,55,040	32,43,700	1,22,74,700	98,75,700	58,27,600
<i>Add—</i>								
Amount enfaced at Madras between 9th and 22nd June 1867 ...	...	...	...	...	...	...	...	...
Amount enfaced at Bombay between 9th and 22nd June 1867 ...	...	...	...	...	...	...	...	...
Amount enfaced at Calcutta between 9th and 22nd June 1867 ...	...	...	...	...	7,700	19,500	17,600	72,700
TOTAL ...	36,100	26,666	2,346	20,55,040	32,51,400	1,22,94,200	98,93,300	59,00,300
<i>Deduct—</i>								
Amount written off in the London Registers ...	...	...	...	10,134	...	7,800	20,000	35,500
Balance on 22nd June 1867 ...	33,100	26,666	2,346	20,44,906	32,51,400	1,22,86,400	98,73,300	58,64,800

PUBLIC DEBT OFFICE; }
BANK OF BENGAL,
The 9th July 1867.

deduction of amount re-transferred to India, and outstanding in the Books of the Bank of Bengal June 1867.

4½ per cent. Loan of 1856-57.	5 per cent. P. W. Loan of 1854-55.	5 per cent. Loan of 1856-57.	5½ per cent. Loan of 1859-60.	5 per cent. Debenture Loan of 1866-67, redeemable on January 1869.	5 per cent. Debenture Loan of 1866-67, redeemable on 3rd Jan- uary 1870.	5 per cent. Debenture Loan of 1867, redeemable on 1st June 1877.	5 per cent. Debenture Loan of 1867, redeemable on 1st June 1882.	TOTAL AMOUNT.
16,500	45,26,100	5,43,91,500	3,55,34,300	50,000	5,02,000	2,00,000	10,00,000	12,94,17,352
...	...	33,000	77,000	...	...	...	...	1,15,000
...	...	5,800	...	...	...	...	...	1,63,900
...	10,500	1,74,900	10,900	...	...	10,51,000	10,88,000	24,25,100
16,500	45,36,600	5,46,10,300	3,56,22,200	50,000	5,02,000	12,51,000	20,88,000	13,21,21,652
...	82,900	1,64,000	15,19,000	...	12,000	...	...	18,32,000
16,500	45,03,700	5,44,45,400	3,41,03,200	50,000	4,90,000	12,51,000	20,88,000	13,02,80,652

GEO. DICKSON,

Secretary and Treasurer.

deduction of amount re-transferred to India, and outstanding in the Books of the Bank of Bengal June 1867.

4½ per cent. Loan of 1856-57.	5 per cent. P. W. Loan of 1854-55.	5 per cent. Loan of 1856-57.	5½ per cent. Loan of 1859-60.	5 per cent. Debenture Loan of 1866-67, redeemable on 4th Jan- uary 1869.	5 per cent. Debenture Loan of 1866-67, redeemable on 3rd Jan- uary 1870.	5 per cent. Debenture Loan of 1867, redeemable on 1st June 1872.	5 per cent. Debenture Loan of 1867, redeemable on 1st June 1877.	5 per cent. Debenture Loan of 1867, redeemable on 1st June 1882.	TOTAL.
16,500	45,03,700	5,44,45,400	3,41,03,200	50,000	4,90,000	10,50,000	12,51,000	20,88,000	13,13,39,652
...
...
...	...	1,92,100	81,400	...	12,000	10,000	1,10,000	4,84,000	10,07,000
16,500	45,03,700	5,46,37,500	3,41,84,800	50,000	5,02,000	10,60,000	13,61,000	25,72,000	13,23,46,652
...	...	27,000	...	...	...	...	...	...	1,00,434
16,500	45,03,700	5,46,10,500	3,41,94,600	50,000	5,02,000	10,60,000	13,61,000	25,72,000	13,22,46,218

GEO. DICKSON,

Secretary and Treasurer.

**DEPUTY ACCOUNTANT GENERAL'S OFFICE,
HYDERABAD.**

NOTIFICATION.

Bolarum, the 4th July 1867.

Under instructions from the Comptroller General of Accounts, it is hereby intimated that applications for funds on account of Imperial expenditure in the Hyderabad Administration, should be addressed to the undersigned, by whom Letters of Credit will be issued on the Political Treasury at Hyderabad.

E. SIMPSON BYRNE,
Depty. Acctt. Genl., Hyderabad.

PAPER CURRENCY OFFICE.

NOTIFICATION.

Calcutta, the 1st July 1867.

NEW ISSUE OF CURRENCY NOTES.

A new pattern of Currency Notes for Rs. 1,000 and Rs. 500 has been issued from the Exchange Department, Calcutta, from the 18th instant.

The chief distinguishing marks of the new Notes are as follows:—

I.—The value is printed in letters at the upper part, and in figures at both sides of the Note in the—

Persian, Mahajonic, Nagari, and Bengali characters.

II.—The number is printed in black ink on a green medallion.

III.—The value is also printed in large figures of a green colour across the lower part of the Note.

These Notes will circulate for the present concurrently with those of the old pattern, and both are equally a legal tender: the Notes of the old pattern will be gradually withdrawn from circulation as they are superseded by the present issue.

Until further notice, these new Notes will only be issued for Rs. 1,000 and Rs. 500; for the lower denominations the old pattern will be still maintained.

J. A. BALLARD,
Offg. Head Commissioner,
Paper Currency.

**Orders by the Vice-Chancellor and Syndicate
of the Calcutta University.**

The undermentioned Students have passed the Examination for a License in Civil Engineering:—

FIRST DIVISION:

In Order of Merit.

M. R. Lackersteen	...	Presidency College,
		C. E. Dept.
Khetter Nath Ghose	...	Ditto ditto.
Omerto Lall Chowdry	...	Ditto ditto.
Bhobun Mohun Bose	...	Ditto ditto.

SECOND DIVISION:

In Order of Merit.

Preo Nath Banerjee	...	Presidency College,
		C. E. Dept.
Unadi Nath Mookerjee	...	Ditto ditto.

The following changes in the Bye-Laws and Regulations of the Calcutta University, having received the sanction of the Senate and of His Excellency the Viceroy and Governor General in Council, are hereby promulgated for general information:—

*Form of Certificate required from Candidates for
the Entrance Examination.*

I certify that the above-named Candidate has,

This certificate is to be signed by the Principal or Head Master of the College or School at which the Candidate has been or is being educated; or, if he be a private* student, by the Principal of an Affiliated College, or by a Government Inspector of Schools.

to the best of my belief, attained the age of 16 years; that I know nothing against his moral character; that he has not already passed the Entrance Examination of the Calcutta University; that there is, in my opinion, a reasonable probability of his now passing it, and that he has signed the above application.

The

1867.

*Form of Certificate required from Candidates for
the First Examination in Arts.*

I certify that the above-named Candidate has

This certificate to be signed by a Principal or Head Master of an Affiliated Institution.

satisfied me, by the production of the Registrar's Certificate, that he has passed the Entrance Examination of the University of Calcutta; that I know nothing against his moral character; that there is, in my opinion, a reasonable probability of his now passing the First Examination in Arts, and that I believe the subjoined account to be true.

*Form of Certificate required from Candidate, for
the B. A. Examination.*

I certify that the above-named Candidate has

This certificate to be signed by a Principal or Head Master of an Affiliated Institution.

satisfied me, by the production of the Registrar's Certificate, that he has passed the First Examination in Arts of the University of Calcutta; that I know nothing against his moral character; that there is, in my opinion, a reasonable probability of his now passing the B. A. Examination, and that I believe the subjoined account to be true.

The following paragraph is added to the Regulations for Honors in Arts:—

"A fee of Rupees fifty shall be payable by each Candidate. No Candidate shall be admitted, unless he shall have paid this fee to the Registrar. A Candidate who fails to pass, or present himself for Examination, shall not be entitled to claim a refund of the fee."

J. SUTCLIFFE, M. A.,

The 1st July 1867.

Registrar.

* Private Student:—One who has attended at no Educational Institution for six months before the Examination, and applications of Private Students must be forwarded to the Registrar not later than the 31st October.

SILVER BALANCE IN THE MINT.

Balance of Bullion under assay, or remaining to be assayed, on the morning of the 1st July 1867	...	...	64,366
1st July 1867, tendered	...	...	.....
			64,366
Certificates issued	...	...	2,143
Balance	...	...	62,223
2nd July 1867, tendered	...	...	1,246
			63,468
Certificates issued	...	...	.....
Balance	...	...	63,468
3rd July 1867, tendered	...	...	.....
			63,468
Certificates issued	...	...	.....
Balance	...	...	63,468
4th July 1867, tendered	...	...	1,04,100
			1,67,568
Certificates issued	...	...	36,446
Balance	...	...	1,31,122
5th July 1867, tendered	...	...	2,92,487
			4,23,609
Certificates issued	...	...	.....
Balance	...	...	4,23,609
6th July 1867, tendered	...	...	2,20,227
			6,43,836
Certificates issued	...	...	1,274
Balance	...	...	6,42,562
Difference in value between tender and certificates	...	...	3,066
Balance of bullion under assay, or remaining to be assayed	...	...	6,39,496
<i>Notes.</i> —Value of silver remaining for coinage at end of week in the Mint			
	...	...	27,87,561
Deduct value of silver appertaining to the Currency Department...	...	...	27,61,718
Balance	...	...	25,843

CALCUTTA MINT,
The 9th July 1867. }

J. A. BALLARD,
Offg. Mint Master.

CURRENCY NOTES.

Extract from Financial Department Notification No. 1004A., dated Simla, 30th July 1866.

Para. 9.—“The person making the statement respecting a lost or destroyed Note, or portion of Note, will be required to advertise its loss (free of charge) *thrice* at least in the *Official Gazette* of the Presidency or place where or within which the Note is payable, and *once* in the *Gazette* of India.”

Lost.

The right halves of the following Currency Notes, Trichinopoly Circle—intimation of loss given to the Currency Office, Trichinopoly:—

No. B11—28950, dated 20th July 1863, for Rs. 100.
 „ B17—53350, „ 19th „ 1865, „ 100.
 „ B17—53351, „ „ „ „ „ 100.
 „ B8—99059, „ 7th „ 1863, „ 10.

Half notes as follows—information given to Currency Office, Nagpore:—

No. A26—80395, for Rs. 20.
 „ A17—45339, „ 10.

J. JOHNSTONE, *Lieut.,*
Supdt. of Elephant Kheddas,
Central Provinces.

Second halves of the following Currency Notes, Allahabad Circle—intimation of loss has been given to the Currency Offices, Allahabad and Calcutta:—

Nos. 03189, 29363, and 03181, for Rs. 10 each.

The following Currency Notes:—

No. A9—19865, dated 11th July 1861, for Rs. 20.
 „ A25—59329, „ 14th May 1862, „ 20.
 „ A7—91895 „ 9th July 1861, „ 10.

RAM NAUTH ROY.

Second halves of following Currency Notes:—

No. A18—34195, for Rs. 100.
 „ A11—43957, „ 50.

First half of Currency Note No. A10—11858, for Rs. 20.

Intimation of loss given to the Currency Office Calcutta.

PARBOTH NAUTH PATTOCK.

Halves of the following Currency Notes—intimation of loss given to the Currency Office, Calcutta:—

No. A9—50736, for Rs. 20.
 „ A9—50737, „ 20.

A. H. TIETKENS,
Cawnpore

Half Note No. A11—54914, of the 13th July 1861, for Rs. 50.

GRINDLAY & Co.

Half of a Government Currency Note No. A27—15745, for Rs. 20, of the Allahabad Circle of Issue. Payment stopped.

CHARLES NEPHEW & Co.

Second half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad :—

No. A18—11684, for Rs. 10.

HURDIAL SINGH,
*Record Keeper, Commr.'s Office,
Roy Barielly Division.*

The right half of the following Government Currency Note—intimation of loss has been given to the Currency Office, Calcutta :—

No. A6—47334, for Rs. 10.

SHAM LALL BYSACK,
for MOHESH CHUNDER BISWAS.

The left halves of the following Government Currency Notes of the Allahabad Circle :—

No. A23—78118, dated 17th May 1862, for Rs. 50.

„ A27—18422, „ 16th „ „ 20.

„ A27—16367, „ 16th „ „ 20.
Payment stopped.

GOPAL CHUNDER CHUKERBUTTY.

Second half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad :—

No. A27—18789, for Rs. 20.

J. A. SCOTT,
*Asstt. Surgeon, 91st Highlanders,
Kussowlie.*

Second half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad :—

No. A36—02148, for Rs. 50.

GEO. BEAN,
*Supdt.'s Office, Stud Dept.,
Saharunpore.*

In transit through Post between Mirzapore and Banda, the following Currency Notes of the Allahabad Circle—intimation of loss given to the Deputy Commissioner of Paper Currency at Allahabad :—

No. 14828, for Rs. 20—half.

„ 18755 „ 20—whole.

TARUCKNATH MOOKERJEE,
Mirzapore.

First half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad :—

No. A18—18359, for Rs. 10.

WILLIAM SINCLAIR,
Barrackpore.

First half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad :—

No. A18—22563, for Rs. 10.

HERA LAULL DEY,
*Clerk, Ex. Engr.'s Office,
Lucknow.*

Lost or Stolen.

Half of the following Currency Note—intimation of loss given to the Currency Office, Calcutta :—

No. A34—54333, for Rs. 20.

KOYLASH CHUNDER ROY.

Halves of the following Currency Notes—intimation of loss given to the Currency Office, Calcutta :—

No. A34—32519, dated 25th May 1865, for Rs. 20.

„ A34—32518, „ „ „ 20.

GEO. DEC. HOBSON.

Half of the following Currency Note—intimation of loss given to the Currency Office, Calcutta :—

No. A21—72957, dated 12th May 1862, for Rs. 10.

W. A. THOMAS.

Half of the following Currency Note—intimation of loss given to the Currency Office, Calcutta :—

No. A27—67087, for Rs. 20.

DINO NATH ROY,
for GOORODASS CHUCKERBUTTY.

Government Currency Note No. A29—36174, for Rs. 500. Payment stopped.

A. R. MCINTOSH.

Stolen

At Chindwarrah, the following Currency Notes, Nagpore Circle—the property of Lieutenant R. E. Burrowes. Payment has been stopped. Two hundred Rupees reward for information that will lead to the arrest of the thief :—

No. A30—45525, for Rs. 100.

„ 45527, „ 100.

„ 45528, „ 100.

„ 45591, „ 100.

„ 45592, „ 100.

„ 52401, „ 100.

„ 52402, „ 100.

„ 52404, „ 100.

„ 52426, „ 100.

„ 52427, „ 100.

„ 52428, „ 100.

J. M. BERNILL,
District Supdt. of Police, Chindwarrah.

Lost and Destroyed

By the sinking of a boat at Goalpara on the 17th September 1866, the following Government Currency Note—intimation of loss given to the Currency Office, Calcutta:—

No. A28—57852, for Rs. 1,000.

JOYGOPAL CHUCKERBUTTY.

Mutilated.

The following Government Currency Note—intimation of loss given to the Currency Office, Calcutta:—

No. A25—71099, for Rs. 20.

SHAMCHUND CHUCKERBUTTY.

PROMISSORY NOTES.**Lost.**

Government Promissory Note No. 8286, dated 1st February 1843, of the Loan of 1842-43, for Rs. 1,000, and last endorsed in favor of Brij Loll Chowdry—payment has been stopped in the Books of the Public Debt Office.

D. WOODS,

*Dy. Secy. & Treasurer,
Bank of Bengal.*

The undermentioned 5 per cent. Government Promissory Notes:—

No. 2411 of 8354 of 1854-55, for Rs. 1,500.

„ 75933 of 1856-57, for Rs. 1,000.

GOPALSAHAI,

*Attorney for HUFEEZ-OLLA,
Proprietor of the Notes.*

ADVERTISEMENTS.**Notice.**

Mr. F. A. Gillam has resumed his duties as Agent of the Bank at Allahabad.

By Order of the Directors,

BANK OF BENGAL,
CALCUTTA,
The 11th July 1867.

(Sd.) GEO. DICKSON,
Secy. and Treasurer

Tulloh's Hand-Book.

Price Rs. 3 a copy, or with Postage Rs. 3½.

A second edition of the above compilation of Pay, Deputation, Travelling Allowance, Pension and Leave Rules of Officers in the Civil Department, revised and enlarged, and including the latest orders passed, will be shortly published.

Intending Subscribers will be good enough to make early applications to the undersigned.

W. CLARK,

*Depy. Acctt. Genl., Bengal,
Treasury Buildings, Calcutta.*

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Address—

REGINALD F. SAUNDERS, Esq., B. C. S.,

Barrister-at-Law,

Magistrate of Shahjehanpore, N. W. P.

SHAHJEHANPORE,
April 1867. }

Just Published,

CORRECTED UP TO JULY 1, 1867,

Price Rs. 5; Packing Charges and Postage, 8 As. extra.

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By Authority of Government.

THE

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QUARTERLY ARMY LIST

OF

H. M.'S FORCES IN BENGAL,

TO WHICH IS ADDED

A NON-OFFICIAL SUPPLEMENT,

CONTAINING

THE LATEST CORRECTED CIVIL LIST,

&c., &c., &c.

CALCUTTA:

OFFICE OF SUPDT., GOVERNMENT PRINTING,

4, HASTINGS STREET.

1867.

PROSPECTUS OF THE AKOLAH AGRICULTURAL EXHIBITION

TO BE HELD IN JANUARY 1868.

Exhibition of Live Stock, Machinery and Implements, Produce, Raw Materials, and Manufactures.

1. The Exhibition will be opened on or about the 27th January 1868. The exact date will be notified by advertisement.

2. The Central Committee will be glad to receive applications for space from intending exhibitors at once, and will be prepared by the 1st December 1867 to receive articles for exhibition under Groups II., IV., V., and VI.

3. It is requested that these applications be made in the following form:—

Form of demand for space, Akolah Exhibition of 1867-68

Name in full of Applicant, or name of Firm.

Address in full.

Nature of Goods to be exhibited.

Space the applicant is prepared to occupy,—

Length	feet.
Breadth	feet.
Height	feet.

4. Every case, package, or box containing articles intended for exhibition, should be labelled; such label should show—

Name of Article.

Place of Product or Manufacture.

Name and Residence of Exhibitor.

Group and Class to which it belongs.

Printed labels for this purpose can be obtained on application to the Secretary, Central Committee, Akolah.

5. All articles intended for sale must be priced, and a ticket showing the price must be attached to them. In like manner articles not for sale should be ticketed accordingly.

6. Every facility will be given to parties to effect sales, and the Committee will exact no percentage fee upon sales effected.

7. The prices of admission will be as follows:—

Season Ticket	...	...	Rs.	5	0	0
1st Day	...	...	"	3	0	0
Last Day	...	...	"	1	0	0
Intervening Days	...	...	"	0	4	0

8. The articles and objects exhibited will be divided into Groups and Classes as follows:—

GROUP 1.—LIVE STOCK.

CLASS I.—Cattle.

II.—Horses and Ponies.

III.—Sheep and Goats.

IV.—Poultry.

GROUP 2.—MACHINERY AND IMPLEMENTS USED IN AGRICULTURE, IRRIGATION, CARPENTRY, OR MANUFACTURE OF ANY KIND.

CLASS V.—Prime Movers.

VI.—Implements for Tillage and Harvesting.

VII.—Implements and Machines for Sowing.

VIII.—Implements for Irrigating.

IX.—Implements for preparing Produce for the Market.

X.—Farm-yard and Dairy Implements.

XI.—Miscellaneous Machinery and Implements not included in the above.

GROUP 3.—AGRICULTURAL AND DAIRY PRODUCE, AND RAW MATERIAL, &c.

CLASS XII.—Country Dairy Produce.

XIII.—Grain.

XIV.—Pulse.

XV.—Tubers.

XVI.—Fibres.

XVII.—Cotton.

XVIII.—Raw Silk.

XIX.—Dyes.

XX.—Oil Seeds.

XXI.—Tobacco.

XXII.—Sugar-cane and Raw Sugar.

XXIII.—Honey and Wax.

XXIV.—Wool.

RAW MATERIAL USED FOR FOOD, MANUFACTURES, PHARMACY, &c.

CLASS XXV.—Chemical and Pharmaceutical Substances.

XXVI.—Substances used for Food and Manufactures, &c., such as Dried Fruits, Preserves, Tea and Coffee, Spices, Saccharine Produce, &c.

GROUP 4.—FOREST AND MINERAL PRODUCTS OF INDIA.

CLASS XXVII.—Forest Produce.

XXVIII.—Mineral Products.

GROUP 5.—MANUFACTURES.

CLASS XXIX.—Cotton Fabrics.

XXX.—Woollen Manufactures.

XXXI.—Silk ditto.

XXXII.—Fibrous ditto.

XXXIII.—Embroidered Fabrics and Brocades.

XXXIV.—Hardware and Cutlery.

XXXV.—Pottery, including Bricks, Tiles, &c.

XXXVI.—Glass Manufactures.

XXXVII.—Furniture, Upholstery, &c.

XXXVIII.—Leather Manufactures.

XXXIX.—Paper.

XL.—Arms and Accoutrements.

XLI.—Conveyances.

XLII.—Basket-work and Matting.

XLIII.—Manufactures not included in the above.

GROUP 6.—FINE ARTS.

CLASS XLIV.—Models and Statuary.

XLV.—Engraving, Printing, and Lithography.

XLVI.—Photography.

XLVII.—Manuscripts, Drawings, and Paintings.

XLVIII.—Fine Arts not included in the above, such as Jewellery and Enamel, Mosaic, Porcelain, Carving and Fancy Work of all descriptions.

9. Special Prizes will also be adjudged for articles of merit, whether or not included under any of the above headings.

B. BULLOCK,

Secretary, Akolah Exhibition Committee.

Price 5 Rupees.

FINANCE AND REVENUE ACCOUNTS OF THE GOVERNMENT OF INDIA, for the year 1865-66, and ESTIMATE of REVENUE, EXPENDITURE and CASH BALANCES for 1866-67, with a comparison of the two years.

CALCUTTA:

OFFICE OF SUPDT. GOVERNMENT PRINTING,

4, HASTINGS STREET.

1867.



The Gazette of India.

Published by Authority.

SIMLA, SATURDAY, JULY 27, 1867.

HOME DEPARTMENT.

LEGISLATIVE.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 18th July 1867, and is hereby promulgated for general information:—

ACT No. XXXII of 1867.

An Act to enable the Governor General in Council to delegate to a Chief Commissioner powers conferred on a Local Government.

WHEREAS it is expedient to enable the Governor General of India in Council to delegate to any of the Chief Commissioners of Oudh, the Central Provinces, and British Burmah, any power conferred on the Governor General in Council as the Local Government of the territories under the administration of such Commissioner by any Act of the said Governor General in Council; It is hereby enacted as follows:—

1. It shall be lawful for the Governor General of India in Council, by a Notification published in the *Gazette of India*, to delegate to the Chief Commissioner of Oudh, the Central Provinces, or British Burmah, as the case may be, all or any of the powers heretofore or hereafter conferred by any Act of the Governor General of India in Council on the Governor General of India in Council as the Local Government of the territories under the administration of such Chief Commissioners; and all acts done by the Chief Commissioner, to whom any such power shall have been delegated as aforesaid, in exercise of the same power, shall be as valid as if they had been done by the said Governor General in Council.

Short title.

2. This Act may be called "The Chief Commissioners' Powers' Act."

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,

Home Department (Legislative).

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 18th July 1867, and is hereby promulgated for general information:—

ACT No. XXXIII of 1867.

An Act to amend Act No. XXXI of 1861.

WHEREAS it is expedient to amend Act No. XXXI of 1861 (to regulate the manufacture of Saltpetre and the sale of Salt reduced in the refinement thereof); It is hereby enacted as follows:—

1. Section 6 of the said Act shall be read as if for the words "fine of Rupees five hundred," the following were substituted (that is to say), "fine not exceeding Rupees five hundred."

Amendment of Act XXXI of 1861, Section 6.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,

Home Department (Legislative).

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 17th July 1867, and was referred to a Select Committee with instructions to make their report thereon in a week:—

No. 18 of 1867.

A Bill to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable.

WHEREAS it was enacted by Section 1 of Act No. XIX of 1866 (to enhance the price of Salt manufactured and sold under the orders of the Governor of the Presidency of Port Saint George in Council), that Section 43 of Act No. VI of 1844 should be repealed, and that, in lieu thereof, the following section should be substituted (that is to say):—

"XLIII. The price to be paid to the Government of the Presidency of Port Saint George, for salt manufactured and sold under the orders of the Governor of the Presidency in Council, for consumption within the territories subordinate to the same Presidency, shall, from and after the passing of this Act, be one Rupee and eleven annas for every three thousand two hundred tolas weight of salt."

And whereas, with the previous sanction of the Governor General of India, a Bill to be called the Madras Salt Excise Act, 1867, has been introduced into the Council of the Governor of Port Saint George for the purpose of making Laws and Regulations, to enable the Local Government to levy a duty, by way of Excise, on salt manufactured in the districts to which such Act may be made applicable, and there to fix the Salt Excise and Import Duties, and the selling price of salt imported by the Government, at such rates as the Governor of Port Saint George in Council, with the sanction of the Governor General of India in Council, may, from time to time, determine: And whereas, in order to give effect to the proposed enactment, it is necessary to render the said Act No. XIX of 1866, and the section substituted thereby for the original Section 43 of Act No. VI of 1844, inoperative in those districts to which the said Madras Salt Excise Act, 1867, may be made applicable; It is hereby enacted as follows:—

1. In all districts, or parts of districts, of the Madras Presidency to which the said Madras Salt Excise Act of 1867 may be made applicable, Act No. XIX of 1866 of the Governor General of India in Council and the said Section thereby substituted for the original section 43 of Act No. VI of 1844, shall be held to be repealed and of no effect.

STATEMENT OF OBJECTS AND REASONS.

Act No. XIX of 1866 enhances the price of salt manufactured and sold in Madras under the orders of the Local Government from Rupee 1-8 to Rupee 1-11 per 3,200 tolas; and for this purpose, substituted a new Section for Section 43 of Act No. VI of 1844.

In July 1866, permission was given for the introduction of a Bill into the local Legislature of Madras to legalize the adoption of the Excise system of Salt Revenue on the Western Coast of that Presidency, and there to fix, subject to the approval of the Government of India, the rate of duty on imported salt, and the selling price of such salt as the local Government might continue to import and sell at their own depôts.

A Bill has accordingly been drafted to give effect to this sanction, and provision has been necessarily made in it for the repeal, among other enactments, of Section 43, Act No. VI of 1844, as substituted for the original section 43 of that Act by Act No. XIX of 1866, and also of the latter enactment, so far as regards those districts into which the Excise system may be introduced.

As the Local Legislature cannot repeal Act No. XIX of 1866, which was passed by the Imperial Legislature, the present Bill has been framed. It simply proposes to repeal, in the districts to which the Madras Salt Excise Act, 1867, may be made applicable, Act No. XIX of 1866 and the section thereby substituted.

SIMLA,
The 2nd July 1867. }

H. S. MAINE.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 17th July 1867, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 19 of 1867.

THE OUDH RENT ACT.

CONTENTS.

Preamble.

CHAPTER I. PRELIMINARY.

Section.

1. Short Title and Extent of Act.
2. Repeal of laws.
3. Interpretation Clause.

CHAPTER II. OF CERTAIN RIGHTS AND LIABILITIES OF LANDLORDS AND TENANTS.

Right of Occupancy.

4. Tenants having a right of occupancy.

Tenant's right to Lease.

5. Tenant entitled to a lease.
6. Lease to which tenant having right of occupancy is entitled.
7. Lease to which tenant not having right of occupancy is entitled.

Lessor's right to Counterparts.

8. Lessor entitled to counterpart.

Receipts.

9. Receipts for rent.
- Deposit of Rent in Court without suit.*
10. Power to pay into Court without suit brought amount of rent due.
11. Procedure on making and withdrawing such payment.
12. Limitation of suits for balance of rent.

Compulsory Attendance or Payment.

13. Landlord not to compel attendance of tenant. Payment of rent to be enforced only under this Act.

Excessive exaction. Illegal extortion.

14. Compensation for exactions in excess of rent.
15. Compensation for extorting payment of rent.

Abatement of Rent.

16. Suits for abatement of rent of tenant without right of occupancy.
17. Suits for abatement of rent by tenant having a right of occupancy, or by under-proprietor.

Remission of Rent.

18. When Court may allow remission from rent.

Relinquishment of Land.

19. Relinquishment of land by tenant after notice given.

Arrears of Rent.

20. Interest on arrears of rent.
21. Sublessor's liability to have his lease cancelled for arrears.

Compensation for Tenants' Improvements.

22. Tenant's right to compensation for improvements.
23. "Improvements" defined.
24. Compensation how made.

Section.

25. Provision for difference as to amount or value of compensation.
 Power to make rules.
 26. Nothing in Sections 23, 24, 25 to affect agreements.
 27. Tender of lease for 20 years to bar right to claim compensation.

CHAPTER III.

COMMUTATION AND PAYMENT OF RENT IN KIND.

28. Commutation of rents in kind.
 29. Chief Commissioner may declare Section 28 applicable to any place, and the officers to decide cases under that section.
 30. Division and appraisement of produce taken for rent.
 31. Dispute regarding division or appraisement.

CHAPTER IV.

ENHANCEMENT OF RENT.

32. Enhancement of rent of tenant with right of occupancy.
 33. Nothing in Section 32 to affect terms of written contract.
 34. Term for re-enhancement after decision fixing rent under Section 32.
 35. Extent of re-enhancement.
 36. Enhancement of rent of tenant not having right of occupancy holding without, or after expiry or cancellation of, written engagement.
 37. Service and contents of notice of enhancement.
 38. Notice of enhancement, how contested.
 39. Grounds on which tenant not having a right of occupancy, may contest notice.
 40. Court not to enquire into propriety of rate of rent payable by tenant not having right of occupancy.

CHAPTER V.

EJECTMENT.

41. Ejectment for arrears of rent.
 42. Ejectment of tenant having right of occupancy.
 43. Time of ejectment.
 44. Tenant not liable to ejectment without notice.
 45. Liability to ejectment how contested.
 46. Application in absence of suit for court's assistance to eject.
 47. Tenant not having right of occupancy may contest liability to ejectment.

CHAPTER VI.

DISTRRAINT FOR ARREARS OF RENT.

48. Recovery of arrears of rent by distraint.
 Provision as to tenants who have given security for payment of rent.
 As to co-sharers.
 As to Pattidār estates.
 49. No distraint in certain cases.
 50. Power of distraint by whom exercisable. Liability of principal or agent to distrain.
 51. Crops liable to distraint.
 52. Demand of arrear before or at time of distraint.
 53. Value of distress.
 Service of list of property to be distrained.
 54. Standing crops when distrained to be reaped and stored.
 55. Application by distrainer in case of resistance.
 56. Persons empowered to distrain may authorize their servants to do so.
 57. Withdrawal of distress on tender of arrear and expenses.
 58. Distrainer to sue for arrears within ten days of making distress.

Section.

59. Compensation where distrainer fails to procure a decree under Section 58.
 60. Suit to contest distrainer's demand.
 61. Distrainer to prove the arrear in suits to contest his demand.
 Compensation for vexatious distraint.
 62. Suit by a third party claiming property distrained.
 Compensation for illegal distraint.
 63. Landlord's prior claim to distrainable produce in possession of defaulting tenant.
 64. Stranger claiming to be landlord and to have right of distraint to be made a party.
 65. If distrainer does not sue under Section 59 distress to be void.
 66. Sale of perishable crops.
 67. Compensation for illegal distraint.
 68. Compensation for illegal act of distrainer.
 69. Compensation for distraint falsely purporting to be under this Act.
 70. Procedure in case of resistance to distraint.

CHAPTER VII.

JURISDICTION OF THE COURTS.

Suits cognizable.

71. Suits cognizable under this Act.

Grades of Courts.

72. Grades of Courts for purposes of this Act.
 73. Chief Commissioner may declare grade of Tahsildār or Assistant Commissioner.
 74. Deputy Commissioner to have Collector's powers.
 75. Settlement Officers may be invested with powers of Collector, &c., under this Act.
 76. Jurisdiction of Assistant Collector of second class.
 77. Jurisdiction of Assistant Collector of first class.
 78. Jurisdiction of Deputy Collector.
 79. Jurisdiction of Collector.
 80. Jurisdiction of Commissioner.
 81. Jurisdiction of Financial Commissioner.

Appeals and Rehearing.

82. Time for presenting appeals.
 83. No appeal, except in certain cases, from Collector's decree for money below Rupees 100.
 84. Rehearing on discovery of new evidence.

Distribution of Business.

85. Collector may distribute business in subordinate Courts.

Transfer of Suits and Appeals.

86. Transfer suits from subordinate Courts to Court of Commissioner or Collector.
 87. Financial Commissioner may transfer suits and appeals from one subordinate court to another.

Miscellaneous.

88. Subordination of Courts.
 89. Joinder of claim for arrears with claim to eject tenant or cancel lease.
 90. Suits by or against managing Agents or Tahsildārs of Khām estates.
 91. Courts may sit anywhere within limits of their jurisdiction.

CHAPTER VIII.

LIMITATION OF SUITS.

92. General Rule.
 93. Suits for delivery of leases or counterparts.
 94. Suits for arrears of rent, or revenue, or share of profits.
 95. Suits for settlement of accounts.
 96. Suits against agents for money or delivery of accounts or papers.
 97. Limitation of suits for compensation under sections 67, 68, 69.

CHAPTER IX. PROCEDURE.

Section.

98. Civil Procedure Code to be procedure under this Act.
 99. Particulars to be added to plaint.
 100. Summons to defendant to be for final disposal.
 101. Defendant may pay money into Court.
 102. If defendant pay less than amount claimed, plaintiff may proceed.
 103. Collector may make local enquiry.
 104. Immediate execution of decree.
 105. No execution to be issued three years after judgment, unless for sum exceeding Rupees 500.
 106. Enforcement of decree for delivery of papers or accounts.
 107. Alteration of Section 244 of Code of Civil Procedure.
 108. Sale of transferable tenures in execution of decrees for arrears of rent.

Schedules.

A Bill to consolidate and amend the Law relating to Rent in Oudh.

WHEREAS it is expedient to consolidate and amend the law relating to rent in Oudh and to other matters connected therewith; It is hereby enacted as follows:—

CHAPTER I. PRELIMINARY.

1. This Act may be cited as "The Oudh Rent Act," and shall extend only to the territories for the time being under the administration of the Chief Commissioner of Oudh.

2. All laws, orders having the force of law and rules in force in Oudh, inconsistent with any of the provisions of this Act, are repealed.

3. In this Act, unless there be something repugnant in the subject or context,

"Oudh" means the territories for the time being under the administration of the Chief Commissioner of Oudh;

"Court" means any Judicial Officer presiding in a Court of Revenue for the disposal of matters under this Act;

"Assistant Commissioner" includes an Extra Assistant Commissioner;

"Land" includes the ungathered produce of thereof, whether spontaneous or otherwise, and whether growing in earth or water;

"Revenue" means the money payable annually to the Government on account of land;

"Rent" means the money not being revenue, or the portion of the produce of land, payable on account of the use or occupation of land;

"Arrear of rent" means any instalment of rent which is not paid on or before the day when the same becomes due, whether under an instrument in writing or according to local usage;

"Under-proprietor" means any person possessing a heritable and transferable right of property in land for which he is liable to pay rent;

"Tenant" means any person, not being an under-proprietor, who is liable to pay rent;

"Landlord" means any person entitled to receive rent from an under-proprietor or tenant;

"Representative" means the heir or any other person legally representing a deceased person. It also means the guardian of a minor and the legal curator of a lunatic or idiot;

"Suit" means a suit instituted by a plaintiff in the manner provided by this Act up to and including the decree of the Court of first instance;

"Year" and "month" respectively mean a year and month reckoned according to the English calendar;

"Section" means a section of this Act;

"Number." Words in the singular number, include the plural; words in the plural number, include the singular; and words importing the male sex include females.

CHAPTER II.

OF CERTAIN RIGHTS AND LIABILITIES OF LANDLORDS AND TENANTS.

Right of Occupancy.

4. Tenants, who have lost all proprietary right, whether superior or subordinate, in the lands which they hold or cultivate, shall, so long as they pay the rent payable for the same, have a right of occupancy under the following rule, (that is to say):—

Every such tenant, who, within thirty years next before the 13th day of February 1856, has been, either by himself, or by himself and some other person from whom he has inherited, in possession of the proprietary right in a village or estate, shall be deemed to possess an hereditary right of occupancy in the land which he cultivated or held in such village or estate on the 24th day of August 1856: Provided that such land has not come into his occupancy, or the occupancy of the person from whom he has inherited, for the first time since the said 13th day of February 1856: Provided also that no such tenant shall have a right of occupancy in any village or estate in which he or any co-sharer with him possesses any under-proprietary right.

Tenants' right to leases.

5. Every tenant is entitled to receive from his landlord a lease executed by him and containing the following particulars:—

The quantity of land; and, where the fields comprised in the lease have been numbered in a Government survey, the number of each field;

The amount of annual rent reserved:

The instalments in which the same is to be paid :
Any special conditions of the lease :

If the rent is payable in kind, the proportion of produce to be delivered, and the time, manner and place of delivery.

6. Tenants having a right of occupancy are entitled to receive leases at rates of rent determined in accordance with the provisions of Section 32.

7. Tenants not having a right of occupancy are entitled to leases only at such rates of rent as may be agreed on between them and the landlord.

Lessor's right to counterparts.

8. Every person who grants a lease is entitled to receive a counterpart from the person to whom the lease is granted.

Receipts.

9. Receipts for rent and acknowledgments of the tender of rent shall specify the year or years on account of which the rent is acknowledged to have been paid or tendered; and any refusal to make such specification shall be held to be a withholding of a receipt or acknowledgement.

Deposit of Rent in Court without suit.

10. If any under-proprietor or tenant shall, at the place where the rents of the land held or cultivated by him are usually payable, tender payment to the landlord of what the tenant shall consider to be the full amount of rent due from him at the date of the tender to such landlord in respect of such land, and if the amount so tendered shall not be accepted and a receipt in full forthwith granted, it shall be lawful for the under-proprietor or tenant, without any suit having been instituted against him, to deposit such amount in the Collector's Court to the credit of the landlord; and such deposit shall, so far as the under-proprietor or tenant and all persons claiming through or under him are concerned, operate as a payment then made by the under-proprietor or tenant of the amount deposited to such landlord.

11. The Collector shall receive such deposit on the application of the under-proprietor or tenant or his authorized agent made in writing upon paper bearing a stamp of such value as would be necessary on the institution of a suit for arrears of rent under this Act, for an amount equal to that which it is intended to deposit; and on the under-proprietor or tenant or his authorized agent making a declaration in the form or, as nearly as circumstances will admit, in the form set forth in Schedule A hereto annexed, the Collector shall give a receipt for the deposit. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false or shall not know or believe to be true, he shall be deemed to have committed the offence of giving false evidence in a stage of a judicial proceeding. Upon receiving the money so deposited the Collector shall issue a notice to the person to whose credit it has been deposited

in the form set forth in the Schedule B hereto annexed. Such notice shall be served by the Collector without the payment of any fee upon the person to whom it is addressed or upon his authorized agent. In the absence of any such agent it may be served by sticking up a notice of the same in the Office of the Collector and another copy at the place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued or his authorized agent shall appear and apply that the money in deposit be paid to him, it shall immediately be paid accordingly.

12. Whenever a deposit shall have been made under the provisions of this Act, no suit shall be brought against the depositor or his representatives on account of any rent which accrued due in respect of the land last hereinbefore mentioned prior to the date of the deposit unless such suit is instituted within six months from the date of the service of the notice mentioned in Section 11.

Compulsory attendance or payment.

13. No landlord is authorized to compel the attendance of any under-proprietor or tenant for the adjustment of his rent, or for any other purpose, nor can he legally adopt any means of compulsion for enforcing payment of the rents due to him other than are authorized by the provisions of this Act.

Excessive Exaction. Illegal Extortion.

14. Every under-proprietor or tenant, from whom any sum is exacted in excess of the rent specified in his lease or otherwise legally claimable, and every under-proprietor or tenant, from whom a receipt or acknowledgment is withheld for any sum of money paid or tendered by him as rent, shall be entitled to recover from the person receiving such rent, to whom such rent is tendered, compensation not exceeding double the amount so exacted or paid or tendered.

15. If payment of rent, whether the same be legally due or not, is extorted from any under-proprietor or tenant by any means not authorized by this Act, such under-proprietor or tenant shall be entitled, in addition to any amount for which he may obtain a decree in respect of such payment, to receive such compensation not exceeding in any case the sum of two hundred Rupees, as the Court may think proper to award. An award of compensation under this section shall not bar or affect any penalty to which the defendant may be subject under the criminal law.

Abatement of Rent.

16. No suit for an abatement of rent shall be brought by any tenant not having a right of occupancy and not holding under a lease, except on the ground that the area of the land has been diminished by diluvion or otherwise.

17. No suit for an abatement of rent shall be brought by any tenant having a right of occupancy or holding under a lease, or by any under-proprietor except on the ground that the area of the land has

been diminished by dilavion or on some ground specified in the lease, agreement or decree under which he holds.

Remission of Rent.

15. Notwithstanding anything contained in Sections 16, 17 and 40, it shall be lawful for the Court in making a decree for an arrear of rent, to allow such remission from the rent payable by any tenant, as may appear equitable, if the area of the land in the occupation of such tenant has been diminished by dilavion or otherwise, or if the produce of such land has been diminished by drought or hail, or other calamity beyond the control of the tenant, to such an extent that the full amount of rent payable by such tenant cannot, in the opinion of the Court, be equitably decreed.

Relinquishment of Land.

19. Any tenant who desires to relinquish the land held by him, shall be at liberty to do so provided he gives notice of such desire in writing to the landlord or his authorized agent on or before the 15th day of May next following. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the landlord or his authorized agent refuse to receive such notice and to sign a receipt for the same, the tenant may make an application to the Court, which shall thereupon cause the notice to be served on such landlord or his agent in the manner provided in Section 37: Provided that if notice of enhancement of rent shall have been served on the tenant in manner provided by Section 37, he may, within fifteen days of receiving the notice, signify in writing his intention to relinquish his holding; and such writing if served on the landlord or his authorized agent shall be held to be a notice under this Section.

Arrears of Rent.

20. An arrear of rent, unless otherwise provided by written agreement, shall bear interest at twelve per cent. per annum.

21. When an arrear of rent shall be adjudged to be due from any sub-lessor, his lease shall be liable to be cancelled, and he himself to be ejected: Provided that no such lease shall be cancelled, nor the sub-lessor ejected, otherwise than in execution of a decree under the provisions of this Act.

Compensation for Tenants' Improvements.

22. If a tenant, or the person from whom he shall have inherited, make any such improvements on the land in his occupancy as are hereinafter mentioned; and if a landlord serve, under this Act, upon any such tenant not having a right of occupancy, a notice of ejectment or enhancement of rent from or in respect of the land in his occupation, or bring a suit to eject or to enhance the rent of any such tenant having a right of occupancy, the tenant shall be entitled to compensation for the outlay, in money or labour, or both, in making such improvements, which shall have been effected by him, or the person from whom he has

inherited, within thirty years next before the service or institution of such notice or suit as aforesaid.

23. The word "improvements," as used in the last preceding Section, means "Improvements" works by which the annual letting value of the land has been, and, at the time of demanding compensation, continues to be, increased, and shall comprise—

1st.—The construction of wells and of works for the storage of water, for applying water for irrigation, for drainage, and for protection against floods; the reclaiming, clearing and enclosing of waste lands and jungles; and other works of a like nature;

2nd.—The renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value.

24. Such compensation may, at the option of the landlord or his representative, be made,—

(1).—By payment in money;

(2).—By the grant of a beneficial lease of the land by the landlord or his representative to the tenant or his representative; or

(3).—Partly by payment in money, and partly by the grant of such lease as aforesaid.

25. In case of difference as to the amount or value of the compensation tendered, the amount of the payment or the terms of the lease, or both, shall be determined by the Court; and it shall be lawful for the Chief Commissioner of Oudh, with the previous sanction of the Governor General of India in Council, to make rules consistent with this Act, for giving effect to the provisions contained in the former part of this Section, and from time to time, with such sanction as aforesaid, to alter and add to the rules so made.

26. Nothing in Sections 23, 24 and 25 shall affect the terms of any agreement in writing which may have been, or may be, entered into between a landlord and a tenant respecting the making of, or compensation for, improvements.

27. If in any case a landlord shall tender to a tenant a lease of the land in his occupation, for a term of not less than twenty years from the date of the tender, at the annual rent then paid by the tenant or at such other annual rent as may be agreed upon, such tender, if accepted by the tenant, shall be deemed to be a bar to any claim by him or his representative in respect of improvements previously made on such land by the tenant or the person from whom he shall have inherited.

CHAPTER III.

COMMUTATION AND PAYMENT OF RENT IN KIND.

28. In any district in which a settlement of revenue is in progress, it shall be lawful for any officer employed in making or revising

such settlement, in any case in which the rent of a tenant having a right of occupancy is paid in kind or by the estimated value of a portion of the crop, to commute, on the application either of the landlord or the tenant, such rent into a rent in money. The amount of rent thus fixed shall be binding upon the parties concerned. All decisions already passed by any such officer, commuting rents in kind or by valuation to rents in money, shall, subject to the same appeal as is given by this Act in respect of decisions passed in suits, be binding on the parties concerned.

22. It shall be competent to the Chief Commissioner to declare the provisions of section 28 applicable to any district or portion of a district, in which a settlement of revenue is not in progress; and to declare what officers are empowered to hear and decide cases under this section; and, with the sanction of the Governor General in Council, to make rules consistent with this Act for the guidance of Officers acting under this section and Section 28.

30. Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop or other procedure of a similar nature requiring the presence both of the tenant and landlord either personally or by a representative, if the landlord shall neglect to attend at the proper period, the tenant may apply to the Court, which may thereupon issue notice to the landlord to attend within a certain period; and, failing his appearance within the period so fixed, the tenant may proceed to divide, estimate, or appraise the crop in the presence of two witnesses, or he may present a petition to the Court requesting that a proper Officer be deputed to make the division, estimate, or appraisement.

31. Wherever rent is taken in the manner mentioned in the foregoing section, and a dispute regarding the division, estimate, or appraisement, is alleged in a petition of plaint by either of the parties concerned, the Court may depute an officer of its establishment, before whom the division, estimate, or appraisement shall be made; and the decision of such officer, in respect of such division, estimate or appraisement, shall, subject to the orders of the Court on the issue of a suit, be final.

CHAPTER IV.

ENHANCEMENT OF RENT.

32. No tenant having a right of occupancy of any land shall be liable to an enhancement of the rent paid by him in respect of such land, except in pursuance of a decree made under this Act on some one of the following grounds, (that is to say):—

1st Case.—That the rate of rent so paid by such tenant is below the prevailing rate payable by the same class of tenants having a right of occupancy for land of a similar description, and with similar advantages, situate in the same village.

Rule.—In this case the Court shall enhance the rent of such tenant to the rate so prevailing.

2nd Case.—That the rent paid by such tenant is more than 12½ per cent. below the rent of land of a similar description, and with similar advantages, paid by tenants of the same class not having a right of occupancy.

Rule.—In this case the Court shall decree an enhancement, such as will raise the rent to the level of the rent assessable at the rates paid by tenants, of the same class not having a right of occupancy for land of a similar description, and with similar advantages, less 12½ per cent.

3rd Case.—That the quantity of land held by such tenant has been ascertained by a measurement made by a proper officer to be greater than the quantity for which rent has been previously paid by such tenant.

Rule.—In this case the Court shall decree rent for the surplus land calculated at the same rates as those paid for the rest of the holding, or, if the plaintiff shall so desire, at rates to be fixed by the first or the second of the said rules, as the case may be.

33. Nothing contained in section 32 shall be held to affect the terms of any written contract entered into between a landlord and tenant, when such contract contains any express stipulation contrary to the provisions of the same section.

34. After a decision has been passed in accordance with section 32, no suit shall lie for re-enhancement of such rent until the expiration of five years from the date of such decision, except under the said third case, or until re-assessment within the said term of five years of the revenue of such land.

35. On such re-assessment of the revenue the landlord may institute a suit to enhance the rent of such tenant to a sum not exceeding double the average amount of the revenue imposed upon land of a similar description and with similar advantages held by tenants of the same class in the same village.

36. No tenant, not having a right of occupancy, who holds or cultivates land without a written engagement, or under a written engagement not specifying the term of his holding, or whose holding has expired, or has been cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which such land is situate and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served upon him on or before the 1st day of April in the year in which such notice is served.

37. The notice of enhancement of rent under section 36, shall be served on the application of the landlord to the Court, through the Tahsildar or other officer authorized to serve such notices, and the landlord shall pay the costs of service. The notice shall be written in Hindi and in Urdu, it shall specify the rent demanded, and the fields on which enhancement is to take place, and it shall inform the tenant that if he means to sue to dispute the enhancement, he must institute his suit on or before the 15th day of May next after the service.

Such notice shall, if practicable, be served personally on the tenant. If the notice cannot be served personally on the tenant, service may be made by affixing it at his usual place of residence, or if he have no such place of residence in the district in which the land is situate, at the village chowpal, or some other conspicuous place in the village in which the land is situate.

38. Any tenant, on whom notice of enhancement has been served under Section 37 may contest his liability to pay the enhanced rent demanded of him by suit instituted on or before the 15th day of May next after the service or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

39. A tenant not having a right of occupancy may contest his liability to pay the enhanced rent demanded from him, on either of the following grounds:—

First.—That he holds a lease or special agreement, or decree of court, under the terms of which he is not liable to such demand.

Second.—That notice of enhancement of rent has not been served upon him in the manner provided by Section 37.

40. It shall in no case be competent to the Court to enquire into the propriety of the rate of rent payable by a tenant not having a right of occupancy. The rent payable by such tenant shall be such amount as may be agreed upon between him and the landlord; or, if no such agreement has been made, such amount as was payable in the previous year; or, if notice of enhancement of rent has been served upon such tenant in the manner provided by Section 37, the amount stated in such notice, unless the tenant has successfully contested his liability to pay the enhanced rent in manner provided by Section 38.

CHAPTER V.

EJECTMENT.

41. When an arrear of rent remains due from any tenant on the 15th day of May in any year after the passing of this Act, he shall be liable to be ejected from the land in respect of which the arrear is due.

42. No under-proprietor or tenant having a right of occupancy, or holding under an unexpired lease or special agreement, or decree of court, shall be ejected otherwise than in execution of a decree under the provisions of this Act.

43. No tenant, except a sub-lessor, shall in any case be ejected from the land in his occupancy, except between the 1st day of April and the 15th day of June in any year after the passing of this Act, unless while his rent is in arrear he has failed to cultivate the land which he holds from the landlord to whom the arrear is due.

44. No tenant not having a right of occupancy who holds or cultivates land without a written engagement, or under a written engagement not specifying the term of his holding, or whose holding has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which such land is situated and has not been renewed, shall be liable to be ejected therefrom unless a written notice shall have been served upon him on or before the first day of April in each year. The provisions contained in Section 37 as to the service, languages and contents of the notice in case of enhancement shall apply, *mutatis mutandis*, to notices served under this section.

45. Any tenant not having a right of occupancy, on whom a notice of ejectment shall have been served as last aforesaid may contest his liability to be ejected by suit instituted on or before the 15th day of May next after the service of such notice, or the land in his occupancy must be vacated on or before that date.

46. If no such suit be brought, and the landlord require the assistance of the Court to eject such tenant, he may, at any time before the 15th day of June next after such service, make application for such assistance, and if the Court be satisfied that notice of ejectment was duly served on the tenant it shall give such assistance accordingly.

47. A tenant not having a right of occupancy may contest his liability to be ejected from the land which he holds on any of the following grounds:—

First, that he holds a lease or special agreement or decree of Court under the terms of which he is not liable to such ejectment;

Second, that notice of ejectment has not been served upon him in manner provided by section 40; and

Third, that he has a right of occupancy in the land from which his landlord seeks to eject him.

CHAPTER VI.

OF DISTRAINT FOR ARREARS OF RENT.

48. When an arrear of rent is due from any tenant, the landlord may distrain the produce of the land on account of which the arrear is due, subject to the rules contained in Section 49 and the following sections:—

Provided, first, that when a tenant has given security for the payment of his rent, the produce of the land, for the rent of which security has been so given, shall not be liable to distraint:

Secondly, that no sharer in a joint estate, under-proprietary, or other tenure, in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate or tenure on behalf of all the sharers in the same;

And, thirdly, that, in pattidari estates, distraint shall be made only through the person under direct engagement for the payment of the Government land revenue, or where the rent of a patti is not collected by such person, through the pattidar who is entitled to collect the rent.

49. Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the preceding year for the land in respect of which the arrear is due, unless a written engagement for the payment of such excess has been executed by the tenant.

50. The power of distraint, vested by Section 48 in landlords, may be exercised by managers under the Court of Wards, managing agents, and tahsildars of estates held under khām management, and other persons lawfully entrusted with the charge of land and also by the agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by power of attorney in this behalf: Provided that, if any such agent purporting to act in the exercise of the said power, commits an illegal act, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

51. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered and deposited in any threshing floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

52. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

53. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value equal to the amount of the arrear with the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or if he be absent, affix it at his usual place of residence.

54. Standing crops and other ungathered products of the earth may, notwithstanding the distraint, be reaped or gathered by the tenant, and may be stored in such granaries or other places as are commonly used by

him for the purpose. If the tenant neglect to do so, the distrainer may cause the said crops or products to be reaped or gathered, and, in such case, shall store the same either in such granaries or other places as aforesaid or in some other convenient place in the neighbourhood. In either case, the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. If the crops or products do not from their nature admit of being stored, the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

55. If a distrainer shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a public officer, he may apply to the Court, and the Court may, if it think necessary, depute an officer to support the distrainer in making the distraint.

56. Any person, empowered to distrain property under Sections 48 or 50, may employ a servant or other person to make the distress; but in every such case he shall give to such servant or person a written authority for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

57. If at any time after property has been distrained as aforesaid the owner of the property shall tender payment of the arrear, and of the expenses of the distress, the distrainer shall receive the same, and give a discharge therefor, and shall forthwith withdraw the distress.

58. Within ten days from the time of making the distress, the distrainer shall institute a suit for the arrears due to him in the manner provided by this Act, and at the time of the institution of the suit shall apply to the Court, in the manner provided by Section 81 of the Code of Civil Procedure, that security be taken from the defendant to fulfill any decree that may be passed against him in the suit, and on his failing to give such security, that the property so distrained shall be attached. Such application shall be disposed of by the Court according to the provisions of the Code of Civil Procedure. If the Court order security to be taken from the defendant, or that the distrained property be attached, the distress shall be withdrawn from the time at which the order of the Court shall be carried into effect.

59. If the person bringing a suit under section 58 shall fail to procure a decree, or the Court shall consider the distraint to have been vexatious or groundless, the Court may award compensation to the defendant, not exceeding twice the value of the property so distrained.

60. A person, whose property has been distrained in the manner hereinbefore provided, may institute a suit to contest the demand of the distrainer immediately after the distraint.

61. In all suits instituted to contest the demand of a distrainer, the defendant shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the

foregoing provisions of this Act. If the demand or any part thereof is found to be due, the Court shall give a decree for the amount in favour of the distrainer. If the distraint is adjudged to be vexatious or groundless, the Court,

Compensation for vexatious distraint.

besides directing the release of the distrained property, may award such compensation to the plaintiff as it may think fit, not exceeding twice the value of the property distrained.

62. If any person shall claim, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit as a person whose property has been distrained for an arrear of rent alleged to be due from him, may institute a suit to contest the demand. When any such suit is instituted, the property may be released upon security being given to the satisfaction of the Court for the value of the same property. If the claim is dismissed, the Court shall make a decree in favour of the distrainer. If the claim is upheld, the Court shall order the release of the

Compensation for illegal distraint.

distrained property, and may award such damages as it may think fit, not exceeding twice the value of the property distrained.

63. No claim to any produce of land liable to distraint under this Act, which produce at the time of the distress may have been found in the possession of a defaulting tenant, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the landlord, nor shall any attachment in execution of a decree of any Civil Court prevail against such prior claim.

64. If in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person, before and up to the commencement of the suit, shall be enquired into, and the suit shall be decided according to the result of such inquiry.

65. If the distrainer shall not bring a suit under Section 58 within the time specified therein, the distress shall be considered null and void, and the property shall be released from distraint.

66. Crops or products, which from their nature do not admit of being stored, may be sold, cut or gathered, under the orders of the Court, at any time after attachment under Section 58.

67. Any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, may institute a suit

under this Act to recover compensation for the illegal distress of his property.

68. If any person, empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, shall distrain any property for the recovery of an arrear of rent alleged to be due otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed, by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit to recover compensation for any injury which he may have thereby sustained.

69. If any person, not empowered to distrain property under this Act, nor employed for the purpose under a written authority by a person so empowered, shall purport to distrain any property under this Act, the owner of such property may institute a suit to recover damages from such person for any injury which he may have sustained from the distraint. The person so distraining shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

70. If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Court, upon complaint being made within ten days from the date of such resistance or removal, shall cause the person accused to be arrested and to be brought before the Court with all convenient speed, and the Court shall proceed forthwith to try the case. If the case cannot be at once heard and determined, the Court may, if it think fit, require the party arrested to give security for his person, whenever the same may be required, and, in default of such security, may be committed to the civil jail until the case is tried. If the resistance or removal of property as aforesaid be proved, and if the offender be the owner of the property, the Court may order him to be imprisoned in the civil jail until the whole arrear due to the distrainer, with all expenses and costs, shall be paid, or shall be levied by distress and sale of the property of the offender under warrant of the Court: Provided that no such imprisonment shall continue for more than six months. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred Rupees, or, in default of payment thereof, to imprisonment in the civil jail for a period not exceeding two months.

CHAPTER VII.

OF THE JURISDICTION OF THE COURTS.

Suits cognizable.

71. The Courts of Revenue in Oudh shall take cognizance of the following descriptions of suits, and such suits shall be heard and deter-

Suits cognizable under this Act.

mined in the said Courts in the manner provided in this Act, and not otherwise:—

A. Suits by a Landlord.

(1.)—For the delivery by a tenant of the counter-part of a lease.

(2.)—For arrears of rent.

(3.)—For the enhancement of the rent of a tenant having a right of occupancy under Section 4.

(4.)—For the ejectment of a tenant having a right of occupancy, or for cancelling any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract.

(5.)—Suits by landlords against any agents employed by them in the management of land, or collection of revenue or rent, or against the sureties of such agents for money received or accounts kept by such agents in the course of such employment, or for papers in their possession.

B. Suits by an Under-proprietor or a Tenant.

(6.)—For the delivery by a landlord of a lease.

(7.)—For contesting a notice of enhancement of rent, or for contesting a notice of ejectment.

(8.)—For compensation on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts or acknowledgments for rent paid or tendered or on account of the extortion of rent by any means not authorized by this Act, or on account of illegal ejectment.

(9.)—For the recovery of the occupancy of any land from which an under-proprietor or tenant has been illegally ejected by the landlord.

(10.)—For contesting the exercise of the power of distraint conferred on landlords and others, by this Act, or any acts purporting to be done in exercise of the said power.

(11.)—For abatement of rent in accordance with the provisions of Sections 16 and 17.

(12.)—For the recovery of compensation for improvements in accordance with the provisions of Section 22.

C. Suits regarding the division or appraisement of produce.

(13.)—Suits regarding the division, estimate, or appraisement of the produce of land under Section 31.

D. Suits by, and against, Co-sharers and Muafidars.

(14.)—Suits by co-sharers for their share of the profits of an estate, or any part thereof, after payment of the revenue and village-expenses, or for a settlement of accounts.

(15.)—Suits by any person under direct engagement for the payment of revenue, for arrears of revenue, payable through him by the co-sharers whom he represents, and for village-expenses and other dues for which the co-sharers may be responsible to him.

(16.)—Suits by co-sharers against persons under direct engagement for the payment of revenue, or by under-proprietors or lessees against muafidars or assignees of revenue, for compensation on account of the illegal exaction of revenue, or of any unauthorized cess or impost, or on account of the refusal of receipts or acknowledgments for revenue paid or tendered.

(17.)—Suits by muafidars or assignees of revenue for arrears of revenue due to them as such muafidars or assignees.

Grades of Courts.

72. For the purposes of this Act, the Grades of Courts Courts of Revenue shall consist of six grades of Courts, for the purposes of this Act. namely,—

(1.)—The Court of the Assistant Collector of the second class.

(2.)—The Court of the Assistant Collector of the first class.

(3.)—The Court of the Deputy Collector.

(4.)—The Court of the Collector.

(5.)—The Court of the Commissioner.

(6.)—The Court of the Financial Commissioner.

73. Subject to any orders that may from time

to time be issued by the Governor General in Council, the Chief Commissioner shall have power to declare to which of the first three grades Assistant Commissioner shall belong, and to invest any Tahsildar with the powers of any of the same grades.

Deputy Commissioner to have Collector's powers. 74. The Deputy Commissioner shall exercise the powers of a Collector under this Act.

75. Subject to any orders that may from time to time be issued by the Governor General of India in Council, the Chief Commissioner of Oudh may invest any officer employed in making or revising settlements of revenue with all or any of the powers of a Collector, or Deputy Collector, or Assistant Collector, under this Act.

76. The Court of the Assistant Collector of the second class shall have power to try and determine suits of the description mentioned in Clauses 1, 2, 6, 15, 16 and 17 of Section 71, of which the subject-matter shall not exceed one hundred Rupees in value or amount.

77. The Court of the Assistant Collector of the first class shall have power to try and determine suits of the descriptions referred to the last preceding section of which the subject-matter shall not exceed five hundred Rupees in value or amount.

78. The Court of the Deputy Collector shall have power to try and determine suits of every description of which the subject-matter shall not exceed five thousand Rupees in value or amount.

79. The Court of the Collector shall have power to try and determine suits of every description and of any amount, and to hear appeals from the original decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure as applied by this Act) from the orders of the Courts of the Assistant Collectors, and in the cases of the nature mentioned in Section 83 from such decisions and orders of the Deputy Collectors. Whenever the state of the public business requires it, it shall be competent to the

Chief Commissioner to invest any Deputy Collector with the powers of a Collector under this Act, and, with the sanction of the Governor General in Council, to invest any Collector with all or any of the powers of a Commissioner under this Act.

80. The Court of the Commissioner shall have power to hear and determine appeals from the original decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Courts of the Collectors and Deputy Collectors, except as otherwise provided in Sections 79 and 83.

81. The Court of the Financial Commissioner shall have power to hear and determine appeals from the decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Commissioners, and also applications for a special appeal, as provided in the said Code, from the decisions passed in regular appeal by the Collectors and by the Commissioners.

Appeals and Rehearing.

82. The memorandum of appeal prepared in the form and containing the particulars mentioned in the Code of Civil Procedure, shall be presented to the Court empowered to hear the appeal within the period hereafter specified, unless the appellant shall show sufficient cause to the satisfaction of such Court, for not having presented the memorandum within such period; that is to say, thirty days if the appeal lie to the Collector, six weeks if the appeal lie to the Commissioner, and ninety days if the appeal lie to the Financial Commissioner. The period shall be reckoned from and exclusive of the day on which the decision or order appealed against was passed, and also exclusive of such time as may be requisite for obtaining a copy of the decree or order from which the appeal is made. Applications for special appeal shall be presented in the Court of the Financial Commissioner within the period hereinbefore fixed for appeals.

83. In suits under Clauses 2, 5, 8, 10, 13, 14, 15, 16 and 17 of Section 71 tried and decided by a Collector, if the amount sued for, does not exceed one hundred Rupees, the judgment of the Collector shall be final, except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a tenant, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in this Act.

84. In suits in which the judgment of the Collector is final, as provided in the last preceding section, the Collector may, upon the application of either party if preferred within thirty days from the date of decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial, or for any other good and sufficient reason.

Distribution of Business.

85. The Collector may direct the business in the Courts subordinate to him, whether or not they hold their sittings in the same place, to be distributed among such Courts in such way as he shall think fit.

Transfer of Suits and Appeals.

86. The Commissioner or the Collector may withdraw any suit, instituted in any Court subordinate to him, and try such suit himself, or refer it for trial to any other such subordinate Court competent to try the same. The Commissioner may also withdraw any appeal instituted in the Court of any Collector subordinate to him, and try the appeal himself, or refer it for trial to the Court of any other Collector in his Division.

87. The Financial Commissioner may order that any suit or appeal which shall be instituted in or presented to any Court subordinate to him, shall be transferred to any other such subordinate Court competent to try or hear subject-matter of the same.

Miscellaneous.

88. In the performance of their duties under this Act the Collectors shall be subject to the general control of the Commissioners and of the Financial Commissioner; and the Deputy Collectors and Assistant Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate: Provided that nothing in this section shall empower the Financial Commissioner or any Commissioner or Collector to interfere in any way not authorized by this Act with any decision or order in a suit.

89. A claim to eject a tenant or to cancel a lease, on account of non-payment of arrears of rent, may be joined in the same suit with a claim for such arrears; and the plaintiff may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrears.

90. All suits, which, under the provisions of this Act, may be brought by or against landlords, may be brought by or against managing agents or tahsildars of estates held under khām management, whether such estates are the property of Government or not.

91. It shall be competent to the Courts to sit for the hearing and determining suits and appeals, and for disposing of other business under this Act, in any place within the limits of their local jurisdiction: Provided that every hearing and decision shall be in open Court and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

CHAPTER VIII.

LIMITATION OF SUITS.

92. Except as herein otherwise provided, all suits shall be instituted within one year from the date of the accruing of the cause of action.

93. Suits for the delivery of leases or the counterparts of leases may be instituted at any time during the tenancy of the plaintiff or defendant, as the case may be.

Suits for delivery of leases, or counterparts.

94. Suits for the recovery of arrears of rent or revenue, or share of profits, shall be instituted within three years from the date on which the arrear or share of profit claimed shall have become due.

Suits for arrears of rent, or revenue or share of profits.

95. Suits for the settlement of accounts shall be instituted within one year after the expiration of the year to which the accounts relate, or in the case of any claim for such settlement existing at the date of the passing of this Act, within one year from such date.

Suits for settlement of accounts.

96. Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the continuance of the agency, or within one year after the determination of the agency, or, in the case of claims existing at the date of the passing of this Act, within one year after such date: Provided that, if the person having the right to sue shall, have been fraudulently kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency.

Suits against agents for money, or delivery of accounts or papers.

97. Any suit which may be instituted under Section 87, 68 or 69, shall be commenced within three months from the date of the accruing of the cause of action.

Limitation of suits for compensation under Sections 87, 68, 69.

CHAPTER IX.

PROCEDURE.

98. Subject to the exceptions and provisos under which the Code of Civil Procedure was extended to Oudh, as contained in the declaration of the Governor General in Council, dated the 6th day of August 1861, and republished in Schedule C to this Act annexed, the provisions of the said Code shall, so far as they are applicable and not inconsistent with the provisions of this Act, apply to all suits, appeals, and proceedings here-under.

Civil Procedure Code to be the procedure under this Act.

99. In addition to the particulars required by Section 26 of the said Code to be specified in the plaint, the plaint shall contain the following particulars:—

Particulars to be added to plaint.

1st.—The name of the village or estate, and of the pargana in which the land to which the suit relates is situate.

2nd.—If the suit be for the recovery of an arrear of rent, or for the enhancement or abatement of rent, or for the ejectment of a tenant, or for contesting a notice of enhancement of rent, or for contesting a notice for the ejectment of a

tenant, or for the recovery of the occupancy or possession of any land, the plaint shall specify the extent, situation, and designation of the land to which the suit relates, and, where fields have been marked in a Government survey, the number (if it be possible to give it) of each field.

3rd.—If the suit be for the recovery of an arrear of rent or revenue, the plaint shall specify the yearly rent or revenue of the land, the amount (if any) received on account of the year or years for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due.

Summons to defendant to be for final disposal.

100. In all suits under this Act the summons to the defendant shall be for the final disposal of the suit.

101. In any suit under this Act involving a claim to money, the defendant may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim of the plaintiff, together with the costs incurred by the plaintiff up to the time of such deposit. Notice of the deposit shall be given to the plaintiff, and the amount of the deposit shall be paid to the plaintiff, on his application. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

102. Nothing in the last preceding section shall be held to bar the plaintiff, in any case in which the defendant shall deposit less than the amount claimed by the plaintiff, from proceeding in the suit for the recovery of the balance.

If defendant pay less than amount claimed, plaintiff may proceed.

103. The local enquiry described in Section 180 of the Code of Civil Procedure may also, if he think fit, be made by the Collector in person or other officer presiding in the Court, and the provisions contained in the said Code regarding local inquiries shall, so far as they are applicable, apply to such inquiries made by such Collector or other officer. In such cases the Collector or other officer as aforesaid, after completing the inquiry, shall record on the proceedings such observations as he shall think fit, and the observations so recorded shall be received in the suit.

Collector may make local enquiry.

104. When a decree is passed in any suit under this Act, the Court may, on the oral application of the party in whose favour the decree is passed, direct immediate execution thereof in the manner described in Section 13 of Act No. XXIII of 1861 (to amend Act VIII of 1859).

Immediate execution of decree.

105. No process of execution shall be issued on a judgment under this Act after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred Rupees, in which case the period within which execution may be had shall be regulated by the general rules in force respecting the period allowed for the execution of decrees of the Civil Courts.

No execution to be issued three years after judgment, unless for sum exceeding Rs. 500.

106. If the decree be for the delivery of papers or accounts, the decree may be enforced by the imprisonment in the Civil Jail of the party against whom the decree is

Enforcement of decree for delivery of papers or accounts.

made, or by the attachment of his property, or by both imprisonment and attachment. The imprisonment and attachment may be continued until the party against whom the decree is made shall comply with the terms of it: Provided that no person shall be imprisoned under this section for a longer period than six months.

107. Section 244 of the Code of Civil Procedure shall be read as if the word "Commissioner" were substituted for the word "Court."

108. If the decree be for an arrear of rent due in respect of an under-proprietary tenure, which is transferable by sale, the judgment-creditor may make application for the sale of the tenure, and the tenure may thereupon be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force. But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor so long as such warrant remains in force. If after sale of such tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor.

SCHEDULE A.*

I, A. B., of, &c., do solemnly declare that I did personally (or by my Agent C. D.) on the day of

tender payment to E. F. at the place where the rent of the lands at held or cultivated by me under or from the said E. F., are usually payable), of the sum of Rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full, forthwith, for the same). And I do declare that, to the best of my belief, the sum of Rupees so tendered, and which I now desire to pay into Court, is the full amount which I owe the said E. F. on account of the rent of the said lands from the month of to the month of both inclusive, and

that I owe the said E. F. no further sum on account of the rent of the said lands

SCHEDULE B.†

Court of the Collector of

Dated the day of 18 To E. F., of, &c.

With reference to the within declaration, you are hereby informed that the sum of Rupees therein mentioned, is now in deposit in this Court, and that the above sum will be paid to

* If this declaration is made by an Agent, it must be altered accordingly.

† This is to be by endorsement on a copy of the Declaration under Schedule A., made by the person paying the money into Court.

you or your duly authorized Agent, on application. And take notice that if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

SCHEDULE C.

Under the provisions of Section 385 of Act No. VII of 1859, and Section 3 of Act No. IV of 1860, His Excellency the Governor General in Council is pleased to notify that, from 1st January 1862, Act VIII of 1859 is extended to the Province of Oudh, subject to the following exceptions and provisos:—

1. Section 3 shall be subject to the following proviso:—

Provided that the Judicial Commissioner or any other Court exercising any appellate jurisdiction within the Province of Oudh, may, at any time within one year from the time of the passing or execution of any judgment or order by any Court subordinate to the said Appellate Court, call for such judgment or proceedings without any regular appeal or application for review having been preferred against the same, and may, if he, or it, shall see sufficient grounds, revise and alter, or reverse or confirm the same. But that in such case, before revising, altering or reversing any one judgment or order, the said Judicial Commissioner, or it, shall cause the same notice to be given to the party in whose favour the said judgment or order was pronounced, and the same opportunity to such party to be heard in support thereof, and the same proceedings to be taken as if a memorandum of appeal had been filed by the party aggrieved thereby.

2. Section 17 is excepted, and the term recognized agent is defined as follows, viz., a permanent servant, partner, relation, or friend, whom the Court may admit as a fit person to represent a party, and especially persons holding powers of attorney from absent parties, persons carrying on business on behalf of bankers and traders, managing agents of landholders, nearest male relations of women, and persons *ex-officio* authorized to act for Government, or for any Prince or Chief.

3. Section 111 shall be subject to the following limitation:—It shall not be obligatory on the Court to decide *ex parte* in the absence of defendant, but the Court may proceed to compel his attendance under the following rule, being the rule now in force in Oudh:—

Rule.—If the defendant does not appear, it shall be at the discretion of the Court to issue a warrant to arrest him and detain him till another day appointed for the hearing of the case, and to attach his property.

4. Section 172 So much of this section as requires that the whole of the evidence shall be taken down in writing in the language in ordinary use is excepted, and the record made by the hand of the Judge, under the following rule, being the rule now in force in Oudh, shall be taken as a record of the evidence:—

Rule.—An intelligible note of the essential points of the evidence of each witness is to be

taken at the time and in the course of oral examination by the Officer who tries the case, in his own language. The notes must be legible, complete, and properly arranged, must attest the presence of the witness at the time, and mark every postponement and change of time and scene, so that their *bonâ fide* character may be apparent. Every essential point must be noted, but mere surplusage may be omitted. These notes shall be filed and shall form part of the record of the case: Provided that in cases tried by a European Officer, who has not passed the examination in the Native languages prescribed for Assistant Commissioners exercising special powers, the evidence of witnesses shall also be recorded, at length, in their own language.

Section 205. So much of this section as renders land liable to sale in execution of a decree, will be subject to the restrictions on the sale of land prescribed by the following rule, being the local rule now in force in Oudh:—

Rule.—No ancestral property in land shall be sold in satisfaction of a decree, without the sanction of the Judicial Commissioner: and before acquired property in land shall be so sold, the permission of the Divisional Commissioner shall be obtained.

STATEMENT OF OBJECTS AND REASONS.

In August 1866 certain arrangements were sanctioned by the Government of India for the settlement of the questions which had long been pending regarding rights of occupancy in Oudh. The nature of those arrangements is described in the correspondence between the Government of India and the Chief Commissioner of Oudh, published in the Supplement to the *Gazette of India* of the 1st September 1866. Those arrangements involved the necessity, on the part of the Government, of cancelling all orders, rules, and circulars which were in force in Oudh, recognizing a right of occupancy in non-proprietary cultivators, and the revision of the rules regarding the hearing of suits in the Summary Courts. The Talukdars of Oudh at the same time consented that certain privileges should be granted to certain classes of tenants. Legislation is necessary to carry into effect the engagements thus entered into by the Government, and to confirm the concessions made by the Talukdars. It appears desirable to take this opportunity of placing on a better footing the whole of the law regarding the recovery of rent in Oudh. Much difficulty has been experienced in determining what laws are actually in force in respect of the jurisdiction of the Revenue Summary Courts, and there has consequently been a great want of uniformity in the procedure that has been followed. This has been found to be a serious evil. The practice of the Summary Courts has been loose, uncertain, and dilatory.

Legislation is desirable for another reason. Although the Courts would probably maintain the validity of the rights of occupancy and other privileges which the Talukdars have consented to grant to certain classes of tenants in their estates, it is doubtful whether similar protection would be afforded to the same classes of tenants in estates not belonging to Talukdars.

It is desirable that the procedure of the Revenue Courts in Oudh should correspond with that followed in the neighbouring provinces, so far as this is practicable without injury to any special

interests. Those portions of Act X of 1859, and of Act XIV of 1863, which appear applicable to Oudh, have therefore been incorporated in the present Bill.

It is proposed that, with a few modifications and additions, the Code of Civil Procedure shall apply to suits and proceedings under this Act. This is the more desirable since in Oudh the same officers preside over the Civil and Revenue Courts.

Sections 4, 32, 33, 34 and 35, and Sections 22 to 27 of the Bill are intended to confirm the agreements entered into by the Talukdars in respect of rights of occupancy and other privileges to be enjoyed by certain classes of tenants. The provisions of these sections are not in all respects identical with those contained in the rules to which the Talukdars originally gave their consent. Although the more important of the alterations that have been made, have been already approved by the Talukdars, it will be right, before this portion of the Bill receives the sanction of the Legislature, that a reference regarding it be made to the Talukdars through the Chief Commissioner of Oudh.

Many of the other provisions of the proposed law are of great importance, but it does not appear necessary to notice them in this statement of the general reasons which have led to the introduction of the Bill.

SIMLA,

The 15th June 1867.

JOHN STRACHEY.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Department (Legislative).

HOME DEPARTMENT.

NOTIFICATIONS.

Simla, the 19th July 1867.

No. 218.

Mr. S. S. Melville, of the Civil Service, is permitted to proceed to Europe on furlough for a period of three years, from the date of embarkation.

The 24th July 1867.

No. 2677.

The Reverend M. E. Mills and the Reverend W. H. Tribe have been appointed by the Right Hon'ble the Secretary of State for India to be Junior Chaplains on the Bengal Establishment.

The appointment of the Reverend Mr. Mills will take effect from the 15th instant.

No. 2678.

The Reverend W. G. Cowie, of the Bengal Ecclesiastical Establishment, has been granted by the Right Hon'ble the Secretary of State an extension of leave for six months on medical certificate.

No. 2681.

Mr. G. Law, Honorary Assistant Surgeon in Civil medical charge of the Bhundara District, has obtained six months' leave of absence on medical certificate with effect from the 19th ultimo.

No. 2683.

Mr. C. J. Windle, Assistant Superintendent, Government Telegraph Department, has obtained privilege leave of absence for fourteen days with effect from the 1st ultimo.

No. 2685.

With reference to Notification No. 4180, dated the 23rd April last, the following Despatch from Her Majesty's Secretary of State for India, No. 73, dated the 14th June, is published for general information:—

PUBLIC.

INDIA OFFICE;

No. 73.

London, the 14th June 1867.

To His Excellency the Right Hon'ble the Governor General of India in Council.

SIR,—With reference to your letter of the 23rd of April last, No. 74, I have to inform you that Her Majesty has been graciously pleased to approve the appointment of the Hon'ble William Grey to be Lieutenant-Governor of the Bengal Division of the Presidency of Fort William.

I have, &c.,

(Sd.) STAFFORD H. NORTHCOTE.

No. 2687.

Mr. E. Prior, while officiating as Extra Assistant Commissioner in the Central Provinces, is invested with the powers of a subordinate Magistrate of the 2nd Class, described in Chapter II., Section 22 of Act XXV. of 1861.

No. 2689.

The services of the two undermentioned Officers of the British Burmah Police, are placed at the disposal of the Foreign Department:—

Lieutenant M. Furlong, Assistant District Superintendent, and Personal Assistant to the Inspector General.

Lieutenant M. C. Poole, Assistant District Superintendent.

The 25th July 1867.

No. 2734.

Mr. A. Tween, Assistant, Geological Survey, has been granted fifteen months' leave of absence on medical certificate, with effect from the date of departure of the last Mail Steamer in June.

No. 2740.

The Governor General in Council is pleased to attach Mr. W. T. Martin, of the Civil Service, reported qualified for the Public Service, to the North-Western Provinces, the Punjab, and Oudh.

No. 2742.

Mr. W. T. Martin, Junior Civil Servant, having obtained a degree of Honor in the Urdu language, has been presented with the authorized donation of Rupees 500.

No. 2750.

Mr. J. Hornby, Extra Assistant Commissioner, Doomagoodium in the Central Provinces, is invested with the powers of a subordinate Magistrate of the 1st Class, described in Section 22 of Act XXV. of 1861.

No. 2752.

Captain M. P. Ricketts, while officiating as Deputy Commissioner of Jubbulpore in the Central Provinces, is invested with the powers described in Section 1 of Act XV. of 1862.

The 26th July 1867.

No. 2767.

Gunesh Kaseenath, Naib Tehseldar of Katole in the Nagpore District of the Central Provinces, is invested with the Civil powers described in Section 6 of Act XIV. of 1865, to be exercised within the limits of his Tehseel.

No. 2769.

Doctor C. Flanck, Inspector General of Prisons in British Burmah, has obtained privilege leave of absence for three months, with effect from such date in or after September next, on which he may avail himself of the same.

E. C. BAYLEY,

Secy. to the Govt. of India.

Fort William, the 24th April 1867.

No. 4370.

By desire of Her Majesty's Secretary of State, the subjoined Notification, issued by Her Majesty's Post Master General in England, is re-published for general information:—

NOTIFICATION.

Contracts for the conveyance of the Mediterranean, East India, China and Japan Mails.

General Post Office, March 1867.

Her Majesty's Post Master General hereby gives notice that, on Monday, the 16th September next, at one o'clock, he shall be ready to receive Tenders from such persons as may be willing to contract for the conveyance of Her Majesty's Mails between Southampton and Alexandria, Marseilles and Alexandria, Brindisi and Alexandria (as an alternative route with that between Marseilles and Alexandria), and Aden and Yokohama.

No Tender will be received after one o'clock on the day above-mentioned.

Printed Forms of Tender may be obtained on application, personal or written, at the General Post Office.

Every Tender must be addressed to the Secretary of the Post Office, and must bear in the left-hand corner of the envelope, the words "Tender for the conveyance of Mails between—

and—

With reference to the above, it is also notified as follows for general information:—

NOTIFICATION.

The Governor General of India in Council hereby gives notice that Tenders from such persons as may be willing to contract under either of the above-mentioned services, will be received for transmission to Her Majesty's Secretary of State for India at the Office of the Secretary to the Government of India in the Home Department, up to 5 p. m. on the 1st August next.

Printed Forms of Tenders may be had on application to the Officer who will then be in charge of the Home Office at the Presidency. Every Tender must be addressed to the Secretary to the Government of India in the Home Department, and should bear in the left-hand corner of the envelope, the words "Tender for the conveyance of Mails between _____ and _____."

No. 4371.

Contracts for the conveyance of the Mails between Calcutta and Yokohama, and between Suez and Bombay.

The Governor General of India in Council hereby gives notice that, on the 1st of August next, he shall be ready to receive Tenders from such persons as may be willing to contract for the conveyance of Her Majesty's Mails between Calcutta and Yokohama (as an alternative route with that between Aden and Yokohama), and between Suez and Bombay.

No Tender will be received after the day above-mentioned.

Printed Forms of Tender may be obtained on application, personal or written, at the Office of the Secretary to the Government of India in the Home Department at Calcutta.

Every Tender must be addressed to the Secretary to the Government of India, Home Department, and must bear in the left-hand corner of the envelope, the words "Tender for the conveyance of Mails between _____ and _____."

J. T. WHEELER,

Assistant Secretary,

for Secy. to the Govt. of India.

FOREIGN DEPARTMENT.

NOTIFICATIONS.

Military.

Simla, the 24th July 1867.

No. 125.

Lieutenant J. Colledge, 1st Squadron Subaltern, 2nd Regiment, Central India Horse, to be Staff Officer of the Force, vice Major J. D. Hall, who vacates the appointment on promotion.

The 26th July 1867.

No. 127.

LEAVE.—Privilege leave for ninety days, from the 1st September next, is granted to Assistant Surgeon W. Biddowes, in medical charge of the Erinpoorah Irregular Force.

Political.

The 20th July 1867.

No. 719.

His Excellency the Viceroy and Governor General in Council is pleased to recognize Mr. W. H. Nichols as Consular Agent at Aden for the United States of America.

No. 721.

The following Order of Her Majesty in Council, making provision for Consular jurisdiction in Madagascar, is published for general information:—

At the Court at Osborne House, Isle of Wight, the 17th day of May 1867.

PRESENT:

The Queen's Most Excellent Majesty in Council.

Whereas by an Act of Parliament made and passed in the Session of Parliament holden in the 6th and 7th years of Her Majesty's reign, intitled "An Act to remove doubts as to the exercise of power and jurisdiction by Her Majesty within divers countries and places out of Her Majesty's dominions, and to render the same more effectual," it is, amongst other things, enacted that it is and shall be lawful for Her Majesty to hold, exercise, and enjoy any power or jurisdiction which Her Majesty now hath, or may at any time hereafter have, within any country or place out of Her Majesty's dominions, in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory:

And whereas Her Majesty hath power and jurisdiction in the dominions of Her Majesty the Queen of Madagascar:

And whereas it is expedient to make provision for the due and effectual exercise of such power and jurisdiction:

1. Now, therefore, in pursuance and by virtue of the said recited Act of Parliament, Her Majesty is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, that Her Majesty's Consuls appointed to reside in the dominions of the Queen of Madagascar shall have full power and authority to carry into effect, and to enforce by the means and in the manner herein-after mentioned and provided, the observance of the stipulations of the Treaty of June 27, 1863, or of any regulations appended to that Treaty, or any which may hereafter be made between Her Majesty, her heirs, and successors, and the Queen of Madagascar, her heirs and successors; and to make and to enforce, by fine or imprisonment, or both, Rules and Regulations for the observance of the stipulations of any such Treaty, and for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Queen of Madagascar, her heirs and successors.

2. And it is further ordered, that a copy of all such Rules and Regulations made by the said Consul shall forthwith be affixed, and kept affixed and exhibited in some conspicuous place in the public office of the said Consul, and that printed copies of the said Rules and Regulations shall, as soon as possible, be provided by the said Consul, and sold at a price not exceeding one dollar for each copy; and for the purpose of convicting any person offending against the said Rules and Regulations, and for all other purposes of law whatsoever, a printed copy of the said Rules and Regulations certified under the hand of the said Consul to be a true copy thereof, shall be taken as conclusive evidence of such Rules and Regulations and all things therein respectively contained, and no penalty shall be incurred or shall be enforced for the breach of any such Rules and Regulations to be hereafter made; until the same shall have been so affixed and exhibited for one calendar month in the public office of the Consul: Provided always, that any such Rule or Regulation made by Her Majesty's Consul, and to be enforced by a penalty, shall, before the first day on which the same shall be so affixed or exhibited, be transmitted to Her Majesty's Principal Secretary of State for Foreign Affairs for allowance or disallowance; and if any such Rule or Regulation shall be disallowed by Her Majesty's Principal Secretary of State for Foreign Affairs, the same shall cease to have effect from the receipt by the Consul of such disallowance; nevertheless, the Consul shall not be liable to be proceeded against in any of Her Majesty's Courts in regard to any act done by him under such Rule or Regulation previously to the receipt of its disallowance by such Consul.

3. And it is further ordered, that it shall be lawful for Her Majesty's Consul as aforesaid, upon information or upon the complaint of any person that a British subject has violated any of the stipulations of any Treaty, or of any Regulations appended to any Treaty, between Her Majesty and the Queen of Madagascar, or has disregarded or infringed any of the Rules or Regulations for the observance of the stipulations of any such Treaty affixed and exhibited according to the provisions of the next preceding Article of this Order, to summon before him the accused person and to receive evidence and to examine witnesses on oath, as to the guilt or innocence of such person in regard to the offence laid to his charge, and to award such penalty of fine or imprisonment against any person convicted of an offence against any such Treaty or appended Regulations, or against the said Rules and Regulations, as may be specified therein respectively; and any charge against a British subject for a breach of any such Treaty, or appended Regulations or for a breach of such Rules and Regulations for the observance of any such Treaty, shall be heard and determined by the Consul without Assessors: Provided always, that in no case shall the penalty to be incurred by a breach of such Rules and Regulations exceed 500 dollars, or three calendar months' imprisonment.

4. And it is further ordered, that any charge against a British subject for a breach of Rules and Regulations other than those relating to the observance of Treaties shall, in like manner, be heard and determined by Her Majesty's Consul; and in all cases in which the penalty shall not exceed 200 dollars, or one calendar month's imprisonment, the Consul shall hear and determine the

charge summarily without the aid of Assessors; but where a penalty attached to a breach of the Rules and Regulations other than those relating to the observance of Treaties shall amount to more than 200 dollars, or to imprisonment for more than one calendar month, the Consul, before he shall proceed to hear the charge, shall summon two disinterested British subjects of good repute to sit with him as Assessors, which Assessors, however, shall have no authority to decide on the innocence or guilt of the person charged, or on the amount of fine or imprisonment to be awarded to him on conviction, but it shall rest with the Consul to decide on the guilt or innocence of the person charged, and on the amount of fine or imprisonment to be awarded to him: Provided always, that in no case shall the penalty to be attached to a breach of Rules and Regulations other than those for the observance of Treaties exceed 500 dollars, or three calendar months' imprisonment; and provided further, that in the event of the said Assessors, or either of them, dissenting from the conviction of the party charged, or from the penalty of fine or imprisonment awarded to him by the Consul, the Consul shall take a note of such dissent, with the grounds thereof, and shall require good and sufficient security for the appearance of the person convicted at a future time, in order to undergo his sentence or receive his discharge; and in default of such security being given, it shall be lawful for the Consul to cause the person to be detained in custody until such security is given.

5. And it is further ordered, that if any person who shall have committed or been charged with any breach of or offence against the Treaty, or any such Rules and Regulations as aforesaid, shall escape or remove from the Consular District within which the fact was committed, and shall be found within another Consular District, it shall be lawful for the Consul within which district such person shall be so found, to proceed against him in the same manner as if the fact had been committed within such district.

6. And it is further ordered, that all suits, disputes, differences, and causes of litigation of a civil nature arising between British subjects within the dominions of the Queen of Madagascar, shall be heard and determined by Her Majesty's Consul, who shall be the sole judge and arbiter thereof respectively; subject nevertheless to an appeal against the decision of the Consul therein to the High Court of the Mauritius, in cases where the sum or matter at issue is of the amount or value of 200 dollars or upwards: Provided always, that the party intending so to appeal against the decision of the said Consul shall, within fifteen days after the determination of the case by the Consul, by himself or his agent, give to the Consul notice in writing of his appeal to the said High Court of the Mauritius; whereupon the Consul shall, as speedily as possible, transmit to the said High Court all the documents which were produced before him in the case, and none other, together with a statement of the evidence taken before him in the case and of the grounds on which his decision was formed, and shall forthwith notify to the several parties the transmission of the said proceedings to the said High Court: Provided also, that it shall be lawful for the Consul to require from any person so appealing to the said High Court reasonable security, to consist in part of one or two sufficient sureties, to be

approved by the Consul, that such person so applying will duly prosecute his appeal, and will abide by the decision to be given therein by the said High Court; and that in case such appeal shall fail, he will answer and satisfy all costs, loss, and damages sustained by the other party by reason of such appeal.

7. And it is further ordered, that it shall be lawful for Her Majesty's Consul to summon not less than two, and not more than four, disinterested British subjects of good repute to sit with him as Assessors at the hearing of any suit, dispute, difference, or cause of litigation whatever of a civil nature brought before him for decision; and in case the sum sought to be recovered shall exceed 500 dollars, such suit shall not be heard by the Consul without Assessors, if within a reasonable time such Assessors can be procured: but the Assessors aforesaid shall have no authority to decide on the merits of such suit; but in the event of such Assessors, or any of them, dissenting from the decision of the Consul, the Consul shall enter the fact of such dissent and the grounds thereof in the Minutes of the Proceedings, and in case of appeal shall transmit the same to the High Court of the Mauritius together with the documents relating to the suit.

8. And it is further ordered, that it shall be lawful for Her Majesty's Consul to enforce his decision in favour of or against a British subject in a civil suit, dispute, difference, or cause of litigation, by distress and sale, or imprisonment, in like manner as a decision of the High Court of the Mauritius, in a civil suit is enforced within the same.

9. And it is further ordered, that in case of an appeal to the High Court of the Mauritius from the decision of Her Majesty's Consul, it shall be lawful for the said High Court, upon such terms as to costs and otherwise as it shall think proper, to admit any further legal evidence besides that adduced before the Consul, on its being established to the satisfaction of the said High Court, by oath or affidavit, that the party desiring to produce such further evidence, was ignorant of the existence of such evidence, or was taken by surprise at the hearing before the Consul, or was unable to produce it before the Consul after due and reasonable diligence and exertion on his part, or where, under the circumstances of the case, it shall appear to the said High Court that further evidence ought to be received.

10. And it is further ordered, that Her Majesty's Consul shall have power in any civil suit, dispute, difference, or cause of litigation, to examine on oath or in such form and with such ceremonies as the witness may declare to be binding on his conscience, any witness who may appear before him, and shall have power, on the application of any party in such suit, to issue a compulsory order for the attendance of any person being a British subject who may be competent to give evidence in such suit; and any British subject who shall have been duly served with any such compulsory order, and with a reasonable notice of the day of hearing of such suit, and upon his expenses of appearing as a witness having been paid or tendered to him by the party at whose application he shall have been ordered to attend, shall, on his wilful default to appear as a witness at the hearing of such suit, be punished with a fine not exceeding 100 dollars, or with imprisonment for a period not exceeding thirty days, at the discretion of the said Consul.

11. Every witness, being a British subject, so examined on oath, whether before the Consul or before an officer duly authorized by Her Majesty the Queen of Madagascar to act judicially, who shall in any such examination give wilfully false testimony, may be convicted of and punished for the crime of wilful and corrupt perjury.

12. And it is further ordered, that it shall be lawful for Her Majesty's Consul to promote the settlement of any civil suit, dispute, difference, or cause of litigation, by amicable agreement between the parties: and, with the consent of the several parties, to refer the decision of a suit or contention to one or more Arbitrators, and to take security from the parties that they will be bound by the result of such arbitration; and the award of such Arbitrator or Arbitrators shall be, to all intents and purposes, deemed and taken to be a judgment or sentence of Her Majesty's Consul in such civil suit, dispute, difference, or cause of litigation, and shall be entered and recorded as such, and shall have the like effect and operation, and shall be enforced accordingly, and shall be final and conclusive to all intents and purposes, and shall not be open to appeal, unless the same shall, within a reasonable time, have been ordered by the Consul to be set aside, on the ground that it is not final, or is defective, or that the Arbitrator or Arbitrators have exceeded their authority, or have been guilty of misconduct in the matter.

13. And it is further ordered, that it shall be lawful for Her Majesty's Consul to cause to be apprehended and brought before him any British subject who may be charged with having committed any crime or offence within the dominions of the Queen of Madagascar, and such Consul shall thereupon proceed with all convenient speed to inquire of the same, and for such purpose shall have power to examine on oath, or in such form and with such ceremony as the witness shall declare to be binding on his conscience, any witness who may appear before him to prove the charge; and also shall have power to compel any person, being a British subject, who may be competent to give evidence as to the guilt or innocence of the party so charged to appear and give evidence, and to punish the wilful default of any such person to appear and give evidence, after reasonable notice of the day of the hearing of such charge, by fine or imprisonment, in like manner as is provided in Article 10 of this Order; and shall examine every such witness in the presence and hearing of the party accused, and shall afford the party accused all reasonable facility for cross-examining such witness, and shall cause the deposition of every such witness to be reduced to writing, and the same to be read over, and, if necessary, explained to the party accused, together with any other evidence that may have been urged against him during the course of the inquiry, and shall require such accused party to defend himself against the charge brought against him, and, if necessary, advise him of the legal effect of any voluntary confession, and shall take the evidence of any witness whom the accused party may tender to be examined in his defence; and every witness, being a British subject, so examined as aforesaid, who shall upon any such occasion give wilfully false testimony, may be convicted of, and punished for, the crime of wilful and corrupt perjury; and, when the case has been fully inquired into, and the innocence or guilt of the person accused has been established to the satisfaction of the Consul, the Consul, as the case may be, shall

either discharge the party accused from custody, if satisfied of his innocence, or proceed to pass sentence on him, if satisfied of his guilt; and it shall be lawful for the Consul, having inquired of, tried, and determined in the manner aforesaid any charge which may be brought before him, to award to the party convicted any amount of punishment not exceeding imprisonment for one calendar month, or a fine of 200 dollars.

14. And it is further ordered, that, if the crime or offence whereof any person, being a British subject, may be accused before Her Majesty's Consul as aforesaid, shall appear to such Consul to be of such a nature as, if proved, would not be adequately punished by the infliction of such punishment as aforesaid, it shall be lawful for such Consul to summon not less than two, or not more than four, disinterested British subjects of good repute to sit with him as Assessors for inquiring of, trying, and determining the charges against such person; and the Consul, when he shall try any such charge with the assistance of Assessors as aforesaid shall, if he is himself convinced of the guilt of the party accused, have power to award any amount of punishment not exceeding imprisonment for twelve calendar months, or a fine of 1,000 dollars; and the Assessors aforesaid shall have no authority to decide on the innocence or guilt of the party accused, or on the amount of punishment to be awarded to him on conviction; but in the event of the said Assessors, or any of them, dissenting from the conviction of, or from the amount of punishment awarded to, the accused party, the Assessors or Assessor so dissenting shall be authorized to record in the minutes of the proceedings the grounds on which they or he may so dissent, and the Consul shall forthwith report to the High Court at the Mauritius the fact of such dissent, and of its having been so recorded in the minutes of the proceedings, and shall, as soon as possible, lay before the said Court copies of the whole of the depositions and proceedings, with the dissent of the Assessor or Assessors recorded therein; and it shall be lawful thereupon for the Court, by warrant under seal addressed to the Consul, to confirm, or vary, or remit altogether, as to the Court may seem fit, the sentence and punishment awarded to the party accused, and such Consul shall give immediate effect to the injunction of any such warrant: Provided always, that in any case in which the Assessor or Assessors shall dissent from the conviction of, or from the amount of punishment awarded to, the accused party, it shall be lawful for Her Majesty's Consul, to take good and sufficient bail from the accused party to appear and undergo the punishment awarded to him, provided the same or any portion thereof be confirmed by the Court, which punishment so confirmed shall commence and take effect from the day on which the decision of the Court shall be notified to the party accused.

15. And in order more effectually to repress crime and offences on the part of British subjects within the dominions of the Queen of Madagascar, it is further ordered, that it shall and may be lawful for Her Majesty's Consul to cause any British subject who shall be found guilty of having openly offended against the laws of Madagascar, or who shall have been twice convicted before him of any crime or offence, and punished for the same, and who, after execution of the sentence of the Consul, shall not be able to find good and suffi-

cient security to the satisfaction of the Consul for his future good behaviour, or who, having been deported under any sentence, shall during such sentence return, to be sent out of the dominions of the Queen of Madagascar; and to this end the Consul shall have power and authority, as soon as may be practicable after execution of the sentence to send any such person to the Mauritius, and in the meantime to detain such party in custody until a suitable opportunity for sending him out of the dominions of the Queen of Madagascar shall present itself; and any persons so to be sent out of the said dominions as aforesaid shall be embarked in custody on board of one of Her Majesty's vessels of war, or, if there shall be no such vessel available for such purpose, then on board any British vessel bound to the Mauritius; and it shall be lawful for the Commander of any of Her Majesty's ships-of-war, or of any British vessel bound to the Mauritius, to receive any such person as aforesaid under a warrant from the Consul to him addressed, and thereupon to convey such person in custody to the Mauritius as aforesaid, in the same manner as if he were a distressed British subject, unless he shall be willing and able himself to defray the expenses of his passage.

16. And it is further ordered, that in any case in which any British subjects shall be accused before Her Majesty's Consul of the crime of arson, or housebreaking, or cutting and maiming, or stabbing or wounding, or of any assault endangering life, or of wilfully causing any bodily injury dangerous to life, or of wilful or corrupt perjury, or of engaging in or being accessory to the purchase or sale of slaves, or of having slaves illegally in his possession, the proceedings before the Consul shall be carried on with the aid of Assessors convened in the manner aforesaid; and it shall be lawful for the Consul, if to him it shall seem fit, to cause any person convicted before him of any of the crimes aforesaid, over and above any fine or imprisonment which may be awarded to such person, to be sent out of the dominions of the Queen of Madagascar for such time as to him shall seem meet, in the manner pointed out in the next preceding Article of this Order, notwithstanding the crime laid to the charge of such person may be the first of which he has been convicted before the Consul.

17. And it is further ordered, that it shall be lawful for Her Majesty's Consuls within the dominions of the Queen of Madagascar, upon information laid before him by one or more credible witnesses that there is reasonable ground to apprehend that any British subject is about to commit a breach of the public peace, to cause such British subject to be brought before him, and to require such British subject to give sufficient security to keep the peace; and in the event of any British subject being convicted of, and punished for, a breach of the peace, to cause such British subject, after he shall have undergone the punishment which may have been awarded to him by the Consul, to find security for his good behaviour; and in the event of any British subject who may be required as aforesaid to give sufficient security to keep the peace, or to find security for his good behaviour, being unable or wilfully omitting to do so, then and in any such case it shall be lawful for Her Majesty's Consul to send such British subject out of the dominions of the Queen of Madagascar, in the manner pointed out in Article 15 of this Order.

18. And it is further ordered, that in all cases in which a British subject shall have been sent out of the dominions of the Queen of Madagascar as provided in the three next preceding Articles of this Order, the Consul sending him out shall forthwith report such act of deportation, with the grounds of his decision thereon, to the High Court at the Mauritius.

19. And it is further ordered, that it shall be lawful for Her Majesty's Consul to cause to be apprehended and brought before him any British subject who may be charged with smuggling or importing into the dominions of the Queen of Madagascar any goods whereon any duty shall be charged or payable to the said Queen, with the intent to evade the payment of such duty, or any goods the importation whereof shall be prohibited; and such Consul shall thereupon proceed with all convenient speed to inquire into the same on oath or solemn affirmation, and to hear the witnesses on both sides, with like powers and in like manner in all respects as is provided by Article 10 of this Order: And it shall be lawful for the Consul, having inquired into and heard the said charge, to determine the same, and if he shall find the party guilty, if the charge against him shall be of importing into the said dominions prohibited goods, then to award him to pay a fine not exceeding treble the value of the said goods at the current price of the day; and if the charge shall be of smuggling or importing goods with intent to evade the payment of duty as aforesaid, then to award him to pay a fine not exceeding treble the amount of duties leviable thereon, and in case of non-payment of any such fine or fines to award him to be imprisoned for a period not exceeding three months, or it shall be lawful for such Consul, without awarding the payment of any fine, to award that such party shall be imprisoned for a period not exceeding six months in such place as he shall appoint: Provided always, that no British subject charged only with importing prohibited goods shall be apprehended, unless and until he shall have one week's notice to appear and answer the charge, and shall have refused, failed, or omitted so to appear.

20. And it is further ordered, that in cases of common assault it shall be lawful for the Consul before whom the complaint is made, to promote reconciliation between the parties, and to suffer compensation and amends to be made, and the proceedings thereby to be finally stayed.

21. And it is further ordered, that a minute of the proceedings in every case heard and determined before the Consul, in pursuance of this Order, shall be carefully drawn up, and be signed by the Consul, and shall, in cases where the Assessors are present, be open for the inspection of such Assessors and for their signature if they therein shall concur; and every such minute, together with the depositions of the witnesses, shall be preserved in the public office of the said Consul.

22. And it is further ordered, that save and except as regards offences committed by British subjects against the stipulations of any Treaty between Her Majesty and the Queen of Madagascar, or against any rules and regulations for the observance of the stipulations of any such Treaty or Convention, duly affixed and exhibited according to the provisions of Article 2 of this Order, or against any rules and regulations for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Queen

of Madagascar, no act done by a British subject within the dominions of the said Queen shall be deemed and taken to be a crime or misdemeanour, or offence rendering a person committing it amenable to punishment, which, if done within any part of Her Majesty's dominions, would not, by a Court of Justice having criminal jurisdiction in Her Majesty's dominions, have been deemed and taken to be a crime or misdemeanour or offence rendering a person committing it amenable to punishment; and Her Majesty is pleased to appoint, by and with the advice of Her Privy Council, Her Majesty's Colony of the Mauritius as the place where crimes and offences committed by British subjects within the dominions of the Queen of Madagascar, which it may be expedient shall be inquired of, tried, determined, and punished within Her Majesty's dominions shall be so inquired of, tried, determined and punished; and Her Majesty's Consul residing in Madagascar shall have authority to cause any British subject charged with the commission of any crime or offence, the cognizance whereof at any time appertain to him, to be sent for trial at Her Majesty's said Colony of the Mauritius.

23. And it is further ordered, that it shall be lawful for Her Majesty's Consul to cause any British subject charged with the commission of any crime or offence, the cognizance whereof at any time appertain to him, to be sent, in any of Her Majesty's ships-of-war, or in any British vessel, to Her Majesty's Colony of the Mauritius for trial before the High Court of the said Colony; and it shall be lawful for the Commander of any of Her Majesty's ships-of-war, or of any British vessel, to receive any such person on board, with a warrant from the said Consul addressed to the Chief Magistrate of Police of the said Colony; and thereupon to keep and detain in lawful custody, and to convey him in custody to the Mauritius, and on his arrival there to deliver him, with the said warrant, into the custody of the said Chief Magistrate of Police, or other officer within the said Colony lawfully acting as such, who, on receipt of the said warrant, and of the party therein named, shall be authorised to commit, or shall commit, such party so sent for trial to the common gaol of the said Colony; and it shall be lawful for the keeper of the said common gaol to cause such party to be detained in safe and proper custody, and to be produced upon the order of the said High Court, and the High Court at the sessions to be holden next after such committal shall proceed to hear and determine the charge against such party, and to punish him for the same, found guilty, in the same manner as if the crime with which he may be charged had been committed within Her Majesty's said Colony of the Mauritius.

24. And it is further ordered, that Her Majesty's Consul, on any occasion of sending a prisoner to the Mauritius for trial, shall observe the provisions made with regard to prisoners sent for trial to a British Colony in an Act passed in the sixth and seventh years of Her Majesty's reign, intituled "An Act to remove Doubts as to the exercise of Power and Jurisdiction by Her Majesty within divers Countries and Places out of Her Majesty's Dominions, and to render the same more effectual."

25. And it is further ordered, that the High Court of the Mauritius shall have and may exercise, concurrently with Her Majesty's Consul

authority and jurisdiction in regard to all suits of a civil nature between British subjects arising within any part of the dominions of the Queen of Madagascar: Provided always, that the said High Court shall not be bound, unless in a fit case it shall deem it right so to do, by writ of *certiorari* or otherwise, to debar or prohibit the Consul from hearing and determining, pursuant to the provisions of the several Articles of this Order, any suit of a civil nature between British subjects, or to stay the proceedings of the Consul in such matter.

26. And it is further ordered, that all fines and penalties imposed under this Order may be levied by distress and seizure, and sale of ships, and of goods and chattels; and no bill of sale, mortgage, or transfer of property made by a party accused after his apprehension, or with a view to securing such party against any crime or offence committed or to be committed by him, or against the consequences thereof, shall avail to defeat any of the provisions of this Order.

27. And it is further ordered, that it shall be lawful for Her Majesty's Consul, from time to time, to establish rules of practice to be observed in proceedings before him, and to make regulations for defraying the expenses of witnesses in such proceeding and the cost of criminal prosecutions, and also to establish rates and scales of fees to be taken in regard to civil suits heard and determined before the said Consul; and it shall be lawful for the said Consul to enforce by seizure and sale of goods, or, if there be no sufficient goods, by imprisonment, the payment of such established fees and of such costs or expenses as may be adjudged against the parties, or any of them: Provided always, that a Table specifying the rates of fees to be so taken shall be affixed and kept exhibited in the public office of the said Consul.

28. And it is further ordered, that all fees, penalties, fines, and forfeitures levied under this Order, save and except such penalties as may by Treaty be payable to the Queen of Madagascar, shall be paid to the public account, and shall be applied in diminution of the public expenditure on account of Her Majesty's Consulate in Madagascar: Provided always, that in the event of any of the Malagasy authorities declining to receive fines payable to the Government of Madagascar as aforesaid, the same shall also be paid to the public account, and applied in the manner last mentioned.

29. And it is further ordered, that Her Majesty's Consul within the dominions of the Queen of Madagascar shall, for and within the said dominions, and for vessels and persons coming within those dominions, and in regard to vessels captured on suspicion of being engaged in the slave trade within those dominions, have all such jurisdiction as for the time being ordinarily belongs to Courts of Vice-Admiralty in Her Majesty's Possessions abroad: And it is further ordered, that it shall be lawful for Her Majesty's Consul to grant probate of will, or letters of administration to the intestate estate of any British subject, or any native of a State or place under British protection, who shall die and leave property within the dominions of the Queen of Madagascar; and if such probate or letters of administration shall not be applied for within thirty days after the death of the deceased person, it shall be lawful for the Consul to administer to the estate of such person, and for so doing to reserve to himself out of the proceeds of such estate a commission not exceeding two and a half per cent. on the account thereof.

30. And it is further ordered, that a register shall be kept by Her Majesty's Consul of all British subjects, and of all natives of British protected States in India who may claim British protection, residing within the dominions of the Queen of Madagascar: and that every British subject now residing within such dominions who shall not have been already enrolled in such Consular register, shall, within a reasonable time after the promulgation of this Order, such time to be specified in a notice affixed and publicly exhibited in the Consular Office, apply to the Consul to be enrolled in such register; and every British subject who may arrive within the said dominions (except British subjects borne on the muster-roll of any British ship arriving in any port of Madagascar) shall, within a reasonable time after his arrival, such time to be specified as aforesaid, also apply to the Consul to be enrolled in such register; and any British subject who shall refuse or neglect to comply to be so enrolled as hereinbefore mentioned, and who shall not excuse such refusal or neglect to the satisfaction of the Consul, shall not be entitled to be recognized or protected as a British subject in respect to any suit, dispute, or difficulty in which he may have been, or may be, engaged or involved within the dominions of the Queen of Madagascar, at any time when he shall not have been or shall not be so enrolled.

31. And it is further ordered, that Her Majesty's Consul shall and may exercise all or any of the powers which, by any Act or Acts of the Imperial Parliament for the regulation of merchant seamen, or for the regulation of the mercantile marine, may now or at any time hereafter be exercised by any Justice or Justices of the Peace within Her Majesty's dominions.

32. And it is further ordered, that nothing in this Order contained shall be deemed or construed to prevent Her Majesty's Consul within the dominions of the Queen of Madagascar from doing or performing any act whatsoever which British Consuls within any other State in amity with Her Majesty are by law, usage, or sufferance entitled or enabled to do or perform.

33. And it is further ordered, that every action or suit brought against Her Majesty's Consul by reason of anything done under the authority of this Order, shall be commenced within six calendar months next after the doing thereof, and not otherwise; and the defendant in every such action or suit shall be entitled to the benefit of the provisions made with respect to defendants in actions or suits in the said hereinbefore recited Act of the sixth and seventh years of Her Majesty's reign.

34. And it is further ordered, that the word "Consul" in this Order shall include every person duly authorized to act in the aforesaid capacity, within the dominions of the Queen of Madagascar; and that, in the construction of this Order, words importing the singular number shall, if necessary, be understood to include several persons, matters, or things; and words importing the masculine gender only, shall, if necessary, be understood to import the feminine gender, unless there be something in the subject or context repugnant to such construction.

35. And it is further ordered, that the provisions of this Order, relating to British subjects, shall extend and apply to all subjects of Her Majesty, whether by birth or by naturalisation, and

also to all persons enjoying Her Majesty's protection in the dominions of the Queen of Madagascar: And it is further ordered, that this Order shall take effect on and after the

36. And the Right Honourable Sir Stafford Henry Northcote, Baronet, and the Right Honourable Lord Stanley, two of Her Majesty's Principal Secretaries of State, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein, as to them may respectively appertain.

By Order of His Excellency the Governor General of India in Council.

The 23rd July 1867.

No. 724.

In recognition of the many public acts of liberality, especially in connection with the recent famine in Bengal, displayed by Baboo Lutchmееput Sing, Doogur of Baloochar in the district of Moorshedabad, the Right Hon'ble the Viceroy and Governor General in Council is pleased to confer upon him the title of "Rai Bahadoor" as a personal distinction.

General.

The 20th July 1867.

No. 1223.

APPOINTMENT.—Lieutenants C. E. Macaulay and W. J. Parker, of the Bengal Staff Corps, to officiate as Assistant Commissioners in the Punjab.

No. 1227.

LEAVE.—Privilege leave for three months is granted to Captain E. G. Clark, Settlement Officer of Baraich in Oudh.

No. 1229.

The following Officers employed in Oudh have been granted leave:—

Lieutenant F. M. Newbery, Officiating Assistant Commissioner	} One month's leave on private affairs.
Mr. E. N. C. Braddon, Superintendent of Excise and Stamps	
	} Two months' privilege leave.

No. 1231.

Lieutenant-Colonel R. G. Jones, Cantonment Magistrate of Secunderabad, having returned from leave in Europe, resumed charge of his office on the afternoon of the 1st instant.

The 22nd July 1867.

No. 1236.

In modification of G. O. No. 944, dated 30th May last, it is hereby notified that the district in Oudh hitherto known as "Darriabad," or "Nuwahgunj," will in future be named "Barabunkee."

The 24th July 1867.

No. 1247.

LEAVE.—Privilege leave for ten days is granted to Captain J. Low, Assistant Commissioner of Roy Bareilly in Oudh.

The 25th July 1867.

No. 1252.

The undermentioned Officers in the Oudh Commission are each granted privilege leave for one month:—

Lieutenant R. H. de Montmorency, Assistant Commissioner.

Mr. H. G. Ross, Officiating Deputy Commissioner of Seetapore.

The 26th July 1867.

No. 1263.

With reference to the General Orders noted in the margin, the appointments of Lieutenant C. E. Macaulay, 9th July. Captain C. A. Baylay, and 20th July. Lieutenant W. J. Parker, to officiate as Assistant Commissioners in the Punjab, are to have effect from the 17th instant.

No. 1265.

APPOINTMENT.—Assistant Surgeon L. D. Spencer, Civil Surgeon of Sangor, is appointed to officiate in medical charge of the Political Agency at Bhopal.

W. Munn,

Foreign Secretary.

FINANCIAL DEPARTMENT.

NOTIFICATIONS.

Simla, the 23rd July 1867.

No. 1594.

Lieutenant-Colonel J. A. Ballard, C. B., R. E., Officiating Mint Master and Head Commissioner of Paper Currency, Calcutta, is allowed privilege leave for three months in addition to the usual time for rejoining his substantive office of Mint Master and Commissioner of Paper Currency in Bombay.

Surgeon-Major J. F. Shekleton, A. B., M. B., Assay Master of the Calcutta Mint, is appointed to officiate for Lieutenant-Colonel H. Hyde as Mint Master and Head Commissioner of Paper Currency, Calcutta, from the date of Lieutenant-Colonel Ballard's departure on privilege leave.

Surgeon H. W. Graham, Deputy Assay Master of the Calcutta Mint, is appointed to officiate for Dr. Shekleton as Assay Master.

No. 1616.

Mr. R. A. Fink, Officiating Deputy Accountant General, Punjab, is allowed privilege leave for two months.

The privilege leave for two and a half months granted to Mr. J. C. Gilliland, an Officer of the 5th

Class of the Financial Department, in Financial Notification No. 998 of the 20th ultimo, is cancelled, and Mr. Gilliland is appointed to officiate during Mr. Fink's absence as Deputy Accountant General, Punjab, in the 4th Class of the Financial Department.

Mr. C. C. Seymour is appointed to officiate for Mr. Gilliland in the 5th Class of the Financial Department.

The 24th July 1867.

No. 1601.

Mr. F. Lushington, Accountant General, Madras, having obtained privilege leave from the 10th instant and having availed himself of it from that date, Mr. W. J. Raynor, Officiating Deputy Accountant General, Madras, is appointed to officiate from that date as Accountant General; and Mr. J. Mackey, Officiating First Accountant General, Madras, to officiate, in addition to his own duties, as Deputy Accountant General.

No. 1618.

Mr. G. W. Kellner is appointed Inspector of local Offices of Account and promoted to the 1st Class of the Financial Department, *vice* Mr. S. G. Wyatt, deceased.

The 26th July 1867.

No. 1679.

Read the following Despatch from Her Majesty's Secretary of State for India:—

FINANCIAL.

INDIA OFFICE;

No. 221.

London, the 14th June 1867.

To His Excellency the Right Hon'ble the Governor General of India in Council.

SIR,—Para. 1. I have received your Financial (Separate Revenue) letter dated the 20th April last, No. 12, forwarding memorials from inhabitants of the town of Calcutta exercising trades and professions, and from the Calcutta Trades' Association, relative to the imposition of the License Tax in India.

2. Those memorials have received that anxious consideration by me in Council, which representations emanating from a body so influential are

justly entitled to; but, after carefully reviewing the financial position of the Government of India, I have not deemed it expedient to disallow Act XX of 1867, and I request that you will inform the memorialists accordingly.

I have, &c.,

(Sd.) STAFFORD H. NORTHCOTE.

Ordered that the foregoing Despatch be published in the *Gazette of India*.

Also, that a copy be furnished to the Sheriff of Calcutta, and to the Master of the Calcutta Trades Association.

No. 1694.

Read the following Financial Despatch from the Right Hon'ble the Secretary of State for India, to the Government of Bombay, No. 84, dated the 14th ultimo:—

FINANCIAL.

INDIA OFFICE;

No. 84.

London, the 14th June 1867.

To His Excellency the Right Hon'ble the Governor in Council, Bombay.

SIR,—1. I have to acquaint you that Mr. Harrington Bulkley, Inspector-in-Chief, Cotton Frauds Department, has been granted six months extension of leave on sick certificate.

2. As Mr. Bulkley failed to apply for an extension of leave in sufficient time to admit of a communication being made to your Government before the expiration of his leave in India, it has been pointed out to him that he thereby rendered himself liable to the loss of his appointment.

I have, &c.,

(Sd.) STAFFORD H. NORTHCOTE.

Ordered that a copy of the Despatch be communicated to the several Local Governments and Administrations, except that of Bombay, and to the Foreign, Home, Military, and Public Works Departments. Also, that it be published in the *Gazette of India*.

Published by Order of the Governor General in Council,

E. H. LUSHINGTON,

Secy. to the Govt. of India

MILITARY DEPARTMENT.

Simla, the 28rd July 1867.

No. 744 of 1867.—The undermentioned Officers have reported their departure on the date specified opposite to their names:—

Colonel W. Maxwell, of the Royal Artillery, G. G. O. No. 713 of 1867	...	...	<i>Matta,</i> 24th June 1867 from Bombay.
2nd Captain R. deBourbel, of the Royal Engineers, G. G. O. No. 718 of 1867	...	...	<i>Candia,</i> 10th July 1867

No. 745 of 1867.—At the recommendation of His Excellency the Commander-in-Chief, and in consideration of his long and meritorious services, His Excellency the Governor General in Council has pleased to sanction the brevet pay of his rank being continued to the undermentioned Native Officer with effect from the date of his transfer to the Invalid Pension Establishment:—

Rossaldar-Major Boolund Khan, Sirdar Bahadoor, late of the 6th Regiment, Bengal Cavalry.

No. 746 of 1867.—The following promotions are made in the undermentioned Corps of the Native Army:—

Corps.	Rank and Names.	To what rank promoted.	From what date.	In whose room.
5th Regiment, N. I.	Jemadar Kalkadeen Sookul ...	Subadar ...	1st May 1867	Runjeet Sing, invalided
	Havildar Shaick Muddoo ...	Jemadar ...	Ditto	Shaick Kader Bux, invalided.
	Ditto Sewdeen Singh ...	Ditto ...	Ditto	Kalkadeen Sookul, promoted.

No. 747 of 1867.—The undermentioned Officers have reported their return from England:—

Major W. C. R. Mylne, of the Bengal Staff Corps, Deputy Assistant Commissary General, 1st Class	11th July 1867.
Surgeon-Major C. Archer, M. D., of the Medical Department	
Honorary Assistant Surgeon T. Briscoe, Head Assistant of the Indent Branch of the Medical Store Department	

Date of arrival
at Fort William.

No. 748 of 1867.—The following promotion is made in the Subordinate Medical Department:—

Rank and Name.	To what rank promoted.	From what date.	In succession to.
Hospital Apprentice Ebenezer Donald Gruse	Asstt. Apothecary	20th June 1867.	Assistant Apothecary C. G. Keane, resigned.

No. 749 of 1867.—Major W. C. R. Mylne, of the Bengal Staff Corps, Deputy Assistant Commissary General, 1st Class, having reported his return from sick leave to Europe on the 11th July 1867, is to officiate as Assistant Commissary General, 2nd Class, from that date—the junior Officers acting in the higher grade reverting to their proper places.

No. 750 of 1867.—His Excellency the Governor General in Council is pleased, in consideration of his meritorious services, to sanction the brevet pay of his rank being continued to the undermentioned Native Officer, with effect from the date of his transfer to the Invalid Pension Establishment:—

Subadar-Major Futteh Sing, late of the 4th Regiment, Sikh Infantry.

No. 751 of 1867.—Subadar-Major Mahomed Shadduck, of the 20th Regiment, Madras Native Infantry, is admitted to the 2nd Class of the Order of British India with the title of "Bahadur," with effect from the 17th April 1867, in succession to pensioned Subadar-Major Mahomed Zummah, "Bahadur," deceased.

The 24th July 1867.

No. 752 of 1867.—*Erratum.*—In G. G. O. No. 772, dated 21st September 1864, laying down a scale of victualling and forage for sea-going ships, after the words "9th November 1861," insert the words *so far as they affect European Troops*, and omit the words "the above scales of allowance are not applicable to coast-wise services between ports in India," at the end of the Order.

Order Books to be corrected accordingly.

No. 753 of 1867.—The following Notification in the Marine Department is re-published for general information:—

No. 4, dated 24th July 1867.—As the new Indian Steam Troopships are provided by Government with all necessary furniture, such as table and bed linen, bedding, plate, glass, China, &c., &c., Officers who may be ordered to embark or who may obtain passages on board of these ships, will not be required to provide any of the articles in question, excepting towels, which are not supplied.

No. 754 of 1867.—With reference to Public Works Department Notification No. 190, dated 13th July 1867, the services of Lieutenant G. F.

O. Boughey, of the Royal Engineers, are replaced at the disposal of His Excellency the Commander-in-Chief.

The 25th July 1867.

No. 755 of 1867.—The services of Assistant Surgeon W. P. Warburton, M. B., of the Medical Department, doing duty with the 21st (Punjab) Regiment of Native Infantry, are placed at the disposal of the Government of the Punjab.

H. W. NORMAN, Col.,
Secy. to the Govt. of India.

MARINE DEPARTMENT.

NOTIFICATION.

Simla, the 24th July 1867.

No. 4 of 1867.—As the new Indian Steam Troopships are provided by Government with all necessary furniture, such as table and bed linen, bedding, plate, glass, China, &c., &c., Officers who may be ordered to embark or who may obtain passages on board of these ships, will not be required to provide any of the articles in question, excepting towels, which are not supplied.

H. W. NORMAN, Col.,
Secy. to the Govt. of India.

PUBLIC WORKS DEPARTMENT.

NOTIFICATIONS.

Establishment.

Simla, the 20th July 1867.

No. 196.

Mr. C. W. Hope, Executive Engineer, 4th Grade, assumed charge of the Arracan Division from Mr. W. H. Dunn, Assistant Engineer, in the afternoon of the 5th June 1867.

No. 197.

Mr. A. J. Hughes, Assistant Engineer, 1st Grade, is transferred from Oudh to Bengal.

The 23rd July 1867.

No. 198.

Mr. J. Fennessy, Executive Engineer, 3rd Grade, with local rank of 2nd Grade, is transferred from British Burmah to Bengal in his substantive rank of Executive Engineer, 3rd Grade.

No. 199.

The appointment by the Government, North-Western Provinces, of Madho Ram, as a Sub-Engineer of the 3rd Grade on the North-Western Provinces Establishment [Notification No. 3799, dated 3rd November 1866], is confirmed, and he is transferred to Oudh.

The 24th July 1867.

No. 200.

Mr. R. M. Lackersteen, a passed student in the Civil Engineering Branch of the Presidency College, is appointed to the Public Works Department as an Engineer Apprentice, and posted to the Punjab.

C. H. DICKENS, Col., R. A.,
Secy. to the Govt. of India.

DEPUTY ACCOUNTANT GENERAL'S OFFICE, HYDERABAD.

NOTIFICATION.

Bolarum, the 4th July 1867.

Under instructions from the Comptroller General of Accounts, it is hereby intimated that applications for funds on account of Imperial expenditure in the Hyderabad Administration, should be addressed to the undersigned, by whom Letters of Credit will be issued on the Political Treasury at Hyderabad.

E. SIMPSON BYRNE,
Depy. Acctt. Genl., Hyderabad.

PAPER CURRENCY OFFICE.

NOTIFICATION.

Calcutta, the 1st July 1867.

NEW ISSUE OF CURRENCY NOTES.

A new pattern of Currency Notes for Rs. 1,000 and Rs. 500 has been issued from the Exchange Department, Calcutta, from the 18th instant.

The chief distinguishing marks of the new Notes are as follows:—

I.—The value is printed in letters at the upper part, and in figures at both sides of the Note in the—

Persian, Mahajonie, Nagari, and Bengali characters.

II.—The number is printed in black ink on a green medallion.

III.—The value is also printed in large figures of a green colour across the lower part of the Note.

These Notes will circulate for the present concurrently with those of the old pattern, and both are equally a legal tender: the Notes of the old pattern will be gradually withdrawn from circulation as they are superseded by the present issue.

Until further notice, these new Notes will only be issued for Rs. 1,000 and Rs. 500; for the lower denominations the old pattern will be still maintained.

J. A. BALLARD,
Offg. Head Commissioner,
Paper Currency.

SILVER BALANCE IN THE MINT.

Balance of Bullion under assay, or remaining to be assayed, on the morning of the 8th July 1867	...	...	6,38,496
8th July 1867, tendered	...	...	5,93,774
			12,33,270
Certificates issued	...	...	.....
Balance	...	...	12,33,270
9th July 1867, tendered	...	...	1,09,921
			13,43,191
Certificates issued	...	...	.....
Balance	...	...	13,43,191
10th July 1867, tendered	...	...	55,650
			13,98,841
Certificates issued	...	...	1,03,652
Balance	...	...	12,95,189
11th July 1867, tendered	...	...	28,681
			13,23,870
Certificates issued	...	...	1,85,829
Balance	...	...	11,38,041
12th July 1867, tendered	...	...	79,141
			12,17,182
Certificates issued	...	...	2,03,787
Balance	...	...	10,13,395
13th July 1867, tendered	...	...	5,09,129
			15,22,524
Certificates issued	...	...	2,09,545
Balance	...	...	13,12,979
Deduct difference in value between tender and certificates	...	...	4,812
Balance of bullion under assay, or remaining to be assayed	...	...	13,08,167
<i>Note.</i> —Value of silver remaining for coinage at end of week in the Mint			
	...	...	30,59,955
Deduct value of silver appertaining to the Currency Department	...	...	27,61,718
Balance	...	...	2,98,237
Calcutta Mint, The 17th July 1867.	J. A. BALLARD, Offg. Mint Master.		

CURRENCY NOTES.

Extract from Financial Department Notification No. 1004A., dated Simla, 30th July 1866.

Para. 9.—“The person making the statement respecting a lost or destroyed Note, or portion of Note, will be required to advertise its loss (free of charge) thrice at least in the *Official Gazette* of the Presidency or place where or within which the Note is payable, and once in the *Gazette of India*.”

Lost.

First halves of the following Currency Notes—intimation of loss given to the Currency Offices, Calcutta, Allahabad, and Lahore:—

No. A19—59759, Calcutta, for Rs. 10.
 „ A18—72282, Lahore, „ 10.
 „ A18—65706, Lahore, „ 10.
 „ A18—11727, Allahabad, „ 10.

K. C. BYRNE.

Right halves of the following Currency Notes—intimation of loss given to the Currency Office, Calcutta:—

No. A27—85240, for Rs. 20.
 „ A21—10878, „ 10.

G. MORTIMER, Barrack Serjt.,
In Departmental charge.

Half of the following Currency Note—intimation of loss given to the Currency Office, Calcutta:—

No. A21—35263, for Rs. 10.

GOYAM ALKE.

The halves of the following Notes—intimation of loss given to the Currency Office, Calcutta:—

No. A11—77317 of Rs. 50.
 „ A11—66713 „ 50.

RAJ COOMAR DOSS.

In transit by Post, first half of Government Currency Note No. 16400, for Rs. 10, Allahabad Circle—intimation of loss given to Currency Office.

H. E. FOX,
Civil Surgeon.

Second half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad:—

No. A30—72537, for Rs. 100.

J. T. FERGUSON,
Asstt. Engineer.

Right half of the following Currency Note—intimation of loss has been given to the Currency Office, Calcutta:—

No. A27—36896, for Rs. 20.

COLVIN, COWIE & Co.

Half Notes Nos. A35—45140 and 45143 (both inclusive) of the 10th May 1865, for Rs. 50 each.

GRINDLAY & Co.

In transit by the Post, the second half of Currency Note No. A35—50644, for Rs. 50. Payment stopped.

J. B. WORGAN.

Right half of Government Currency Note—intimation of which has been sent to the Currency Office:—

No. A7—17114, for Rs. 10.

JEEBARAM.

In transit by Post, between Ajmere and Ahmednuggur, Allahabad Currency Note No. A26—09202.

C. E. LESLIE,
Inspector of Police.

First half of the following Currency Note—intimation of the loss given to the Currency Office, Allahabad:—

No. A12—01160, for Rs. 50.

WATSON, GREEN, & HART.

Government Currency Note No. A9—98060, for Rs. 20, Calcutta Circle.

BHOYROW LALL SHAW.

Second half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad:—

No. A12—02343, for Rs. 50.

A. ANDERSON,
Sub-Deputy Opium Agent,
Fyzabad.

The right halves of the following Currency Notes, Trichinopoly Circle—intimation of loss given to the Currency Office, Trichinopoly:—

No. B11—28950, dated 20th July 1863, for Rs. 100.

„ B17—53350, „ 19th „ 1865, „ 100.

„ B17—53351, „ „ „ „ 100.

„ B8—99059, „ 7th „ 1863, „ 10.

Second halves of the following Currency Notes, Allahabad Circle—intimation of loss has been given to the Currency Offices, Allahabad and Calcutta:—

Nos. 03180, 29863, and 03781, for Rs. 10 each.

Second half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad:—

No. A13—11684, for Rs. 10.

HURDIAL SINGH,
Record Keeper, Commr.'s Office,
Roy Barielly Division.

Half of a Government Currency Note No. A27—15745, for Rs. 20, of the Allahabad Circle of Issue. Payment stopped.

CHARLES NEPHEW & Co.

The left halves of the following Government Currency Notes of the Allahabad Circle:—

No. A28—73118, dated 17th May 1862, for Rs. 50.

„ A27—13422, „ 10th „ „ 20.

„ A27—16367, „ 10th „ „ 20.

Payment stopped.

GOPAL CHENDER CHUCKERBUTTY.

Second half of the following Currency Note—intimation of loss given to the Currency Office, Allahabad:—

No. A27—13789, for Rs. 20.

J. A. SCOTT,
Asstt. Surgeon, 91st Highlanders,
Kussowlic.

Lost or Stolen.

In transit from West Bhootan to Calcutta, the halves of the undermentioned Currency Notes:—

No. A19—68323, for Rs. 10.

No. A19—78323, for Rs. 10.

No. A19—55201, for Rs. 10.

No. A19—81534, for Rs. 10.

No. A19—98913, for Rs. 10.

No. A19—80422, for Rs. 10.

No. A19—33932, for Rs. 10.

No. A19—59655, for Rs. 10.

No. A19—78573, for Rs. 10.

No. A19—51128, for Rs. 10.

Also, in transit from Bhaugulpore to Calcutta,—

No. A35—45383, for Rs. 50.

No. A35—45384, for Rs. 50.

HARMAN & Co.

In transit from Poona to Bombay, the following Currency Notes—intimation of loss has been given to the Currency Office, Bombay:—

No. 67088, for Rs. 10.

No. 88901, for Rs. 20.

CHAS. COOKE,
Poona.

Half of the following Currency Note—intimation of loss given to the Currency Office, Calcutta:—

No. A19—03270, for Rs. 10.

A. WILSON & Co.,
7, Old Court House Corner.

Stolen.

Half of the following Note—intimation of loss given to the Currency Office, Calcutta:—

No. A20—93247, for Rs. 10.

R. W. KING.

Notice.

Application has been made for payment of a Currency Note wrongly joined as follows:—

First half of No. A27—17827, for Rs. 20.

Second half of No. A27—17027, „ 20.

Any person possessing the corresponding halves should communicate with the Paper Currency Office, Allahabad.

T. C. ANDERSON, Captain,
Bengal Staff Corps.

PROMISSORY NOTES.**Lost.**

The undermentioned 5 per cent. Government Promissory Notes:—

No. 2411 of 8354 of 1854-55, for Rs. 1,500.

„ 75933 of 1856-57, for Rs. 1,000.

GOPALSAHAI,
Attorney for HUFEEZ-OLLA,
Proprietor of the Notes.

Lost or Stolen.

A 4 per cent. Government Security No. 6173 of 1835-36, for Rs. 1,000, the property of the undersigned. Any person giving information which will lead to the recovery thereof, shall be rewarded.

GUNGA DEEN CHOWDRI,
Chupper Mohul, Cawnpore.

GAZETTE OF INDIA.**NOTIFICATIONS.**

The 26th April 1867.

The Viceroy and Members of the Government of India having left the Presidency for Simla, it is hereby notified that on and after the 4th May until further notice, the *Gazette of India* will be published at Simla on the morning of every Saturday.

All communications other than remittances intended for the *Gazette* should be addressed to the "Superintendent, *Gazette of India*, Simla."

Remittances should be sent to the Calcutta Office.

In answer to numerous enquiries, the Publisher of the *Gazette of India* notifies to private Subscribers that though no stamps are affixed to their copies, they are still liable to the cost of postage, as that cost, though not paid on each separate parcel, is still debited to the *Gazette* by the Post Office.

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Magistrate of Shahjehanpore, N. W. P.

SHAHJEHANPORE, }
April 1867. }

ADMINISTRATOR GENERAL'S OFFICE.

NOTICE.

List of Estates which have come under charge of the Administrator General during the month of June 1867.

ALEXANDER, JAMES ...	... Late a Captain in the Royal Artillery.
CONNOLLY, JAMES ...	... Late a Sub-Conductor in the Army Commissariat Department.
DOWNING, WILLIAM PRINGLE ...	... Late one of the Attorneys of the High Court, Calcutta.
FORT, JOHN ...	... Late of Read Hall in the Parish of Whalley, in the county of Lancaster in England.
HORNBY, GEORGE WILLIAM ...	... Late an Engineer in the service of the late Honorable East India Company on their Bengal Establishment.
JOHNSTON, GEORGE BERNARD ...	... Late a Lieutenant in H. M.'s Bengal Staff Corps.
LEGGETT, WILLIAM ROBERT ...	... Late an Engineer in H. M.'s Gun-Boat stationed at Chittagong.
RAMSAY, THE HON'BLE JOHN ...	... Late a Lieutenant-General in Her Majesty's Army.
ROBINSON, CHARLES ...	... Late a Guard in the service of the East Indian Railway Company.
SIMPSON, GEORGE EARNEST ...	... Late of the Town of Calcutta, a Merchant.
STERLING, WILLIAM COLQUHOUN ...	... Late a Captain in H. M.'s 107th Regiment, Bengal Infantry.
WOODROFFE, WALTER ...	... Late a Master Pilot in the Bengal Marine Establishment.

N. B.—All persons having claims upon, being indebted to, or holding property belonging to, the abovementioned Estates, are requested to place themselves in communication with the undersigned.

C. S. HOGG,
Administrator General.

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ON THE

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BY

LIEUT.-COL. J. E. GASTRELL

AND

F. H. BLANFORD, A. R. S. M.

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GOVERNMENT OF INDIA.

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OF

Records in the Public Works Department.

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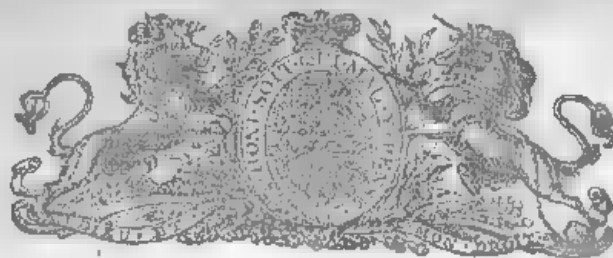
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HOME DEPARTMENT.

LEGISLATIVE.

Simla, the 2nd August 1867.

The following Bill and Statement of Objects and Reasons accompanying it, are published for general information by order of His Excellency the Governor General, under the 19th of the Rules for the Conduct of Business at Meetings of the Council of the Governor General of India for the purposes of making Laws and Regulations :—

THE INDIAN CONTRACT LAW, 1867.

ARRANGEMENT OF SECTIONS.

PART I.

PRELIMINARY.

Section.

1. Short Title.
2. Interpretation Clause.
3. Repeal of Acts.

PART II.

OF CONTRACT.

4. Contract defined.
5. Who may contract.
6. Retraction or alteration of proposal.
7. Acceptance of proposal.
8. Effect of deceit, coercion and undue influence.
9. Effect of false representation inducing a contract.
10. Mistake of fact.
11. Mistake of law.
12. Certainty of subject.
13. Object and consideration.
14. Promise when binding.
15. Contract taking effect on happening of specified uncertain event.
16. Contract taking effect only when specified uncertain event does not happen.
17. Avoidance of engagement intended to take effect only in case specified uncertain event shall happen.
18. When an engagement intended to take effect in case a specified event shall not happen, becomes absolute.
19. Order of performance of different engagements.
20. When one reciprocal engagement does not become absolute till performance of other.
21. Parties mutually bound to facilitate performance.
22. Liability of party preventing event on which contract is to take effect.
23. Liability of one party failing to do act which he is bound to do, and which is necessary to enable the other to perform.
24. When time is essential.
25. Effect of doing several things, but not at the times specified.

Conditional Contracts.

25. Failure to fulfil condition.
26. Contract conditioned to be terminated or varied on the happening, or not happening, of a specified uncertain event.

Section.

27. When such conditions are invalid.
28. Result of such conditions subsequently becoming unlawful or impossible.
29. Termination or variation of contract made with condition subsequent that it shall be terminated or varied unless a certain person perform a specified act.
30. Discharge of alternative obligation where one of the two things is unlawful or impossible.
31. Liability of person failing to do an act which he has engaged to do.

Rule of Construction.

32. Interpretation of contracts.

Performance of Contracts.

33. Person by whom contract is to be performed.
34. Effect of accepting performance from a third person.
35. Dispensation with, or remittance of, or acceptance of satisfaction in lieu of, performance.
36. Acceptance of new contract in substitution.
37. Time and place for performance.
38. Time for performance of engagement where no time is specified, and no application to be made.
39. Time for performance of engagement where time is specified, and no application to be made.
40. Application for performance at a proper time and place.
41. Place for performance of engagement, where no application to be made and no place fixed.
42. Performance in manner or at time prescribed or sanctioned by person entitled to claim it.

Appropriation of payments.

43. Where there are several distinct debts, and the debt to which payment is to be applied, is indicated.
44. Where there are several distinct debts, and the debt to which payment is to be applied, is not indicated.
45. Where neither party makes any appropriation.

Offer of performance.

46. Effect of refusal to accept offer of performance.
47. Requisites to valid offer of performance.

Joint liabilities and rights.

48. Devolution of joint liabilities.
49. Liability of persons jointly bound.

Section.

40. Release of one joint contractor.
 50. Devolution of joint rights.

Power to terminate contract.

51. Power to terminate contract on refusal of party to perform it wholly.

Compensation.

52. Party rightfully terminating contract, entitled to compensation.
 53. Payment of sum specified to be paid in case of breach. Payment of compensation.

PART III.

OF CERTAIN OBLIGATIONS RESEMBLING THOSE CREATED BY CONTRACT.

54. Effect of one person intentionally leading another to believe in a non-existent state of things, when the other acts on such belief.
 55. Effect of one person, by a false representation, inducing another to contract with a third party.
 56. Representation as to future conduct.
 57. Supply of necessities to persons incapable of contracting.
 58. Reimbursement of person paying what another is bound to pay.
 59. Effect of non-gratuitous act of which a person enjoys the benefit.
 60. Responsibility of finder of goods.
 61. Liability of person to whom money is paid by mistake or coercion.

PART IV.

SALE OF GOODS.

62. "Goods" defined.
 63. "Sale" defined.
 64. Sale how effected.
 65. Effect of agreement for sale of thing to be ascertained, made or finished.
 66. Sale of goods which the seller is to put into state in which buyer is to take them.
 67. Sale of goods when seller has to do anything thereto in order to ascertain price.
 68. Sale when goods are unascertained at date of agreement.
 69. Ascertainment of goods by subsequent appropriation.
 70. Ascertainment of goods by seller's selection.
 71. Agreement for sale of immovable and moveable property combined.
 72. Sale of several lots by auction.
 73. Buyer's risk.
 74. Agreement for sale may be oral or written.
 75. Acquisition of ownership of goods by purchase from their possessor.
 76. Acquisition by purchase from possessor of documentary title.
 77. Transfer of ownership of goods agreed to be sold while non-existent.
 78. Contract to sell and deliver at a future day goods not in seller's possession at date of contract.
 79. Determination of unfixed price.

Delivery.

80. Delivery how made.
 81. Effect of delivery to wharfinger or carrier.
 82. Effect of part-delivery.
 83. Seller not bound to deliver until buyer applies for possession.
 84. Place of delivery.

Seller's lien.

85. Seller's lien.
 86. Lien where payment to be made at a future day, but no time fixed for delivery.
 Insolvency defined.
 87. Where payment to be made at future day, and buyer allows goods to remain in seller's possession.
 88. Seller's lien against subsequent buyer.

Stoppage in transit.

89. Power to stop in transit.
 90. When goods are to be deemed in transit.
 91. Continuance of right of stoppage.
 92. Cessation of right on assignment of bill of lading.
 93. Cessation of right on fulfilment of condition.
 94. Stoppage on payment to pledgee of amount of claim.
 95. Stoppage how effected.

Section.

96. Notice of seller's claim.
 97. Right of seller on stoppage.

Resale.

98. Resale on buyer's failure to perform.

Warranty of title.

99. Seller's responsibility for badness of title.
 100. Implied warranty of goodness or quality.
 101. Warranty of soundness on sale of provisions.
 102. Warranty on sale of goods by sample.
 103. Warranty on sale of goods sold as being of a certain denomination.
 104. Warranty where goods ordered for a specified purpose.
 105. Sale of article of a well-known ascertained kind.
 106. Non-responsibility for latent defects.
 107. Buyer's right on breach of warranty.
 108. Rejection or return of goods sold with warranty.

Refusal to accept.

109. Refusal to accept when goods not ordered are sent.
 110. Effect of wrongful refusal to accept.

Rescission in default of payment.

111. Rescission on failure to pay price at time fixed.

Auction.

112. Puffers at auction.

PART V.

OF INDEMNITY AND GUARANTEE.

113. Indemnity defined.
 114. Agent's indemnity against consequences of law ful acts.
 115. Agent's indemnity against consequences of acts done in good faith.
 116. Non-liability of employer of agent to do a criminal act.
 117. Rights and liabilities of indemnity-holder when sued.
 118. Definitions of 'guarantee' 'surety' 'principal debtor' and 'creditor'.
 119. Consideration for guarantee.
 120. When offer constitutes a guarantee.
 121. Surety's liability.
 122. Continuing guarantee.
 123. Revocation of continuing guarantee.
 124. Revocation of continuing guarantee by surety's death.
 125. Liability of two persons primarily liable, not affected by a private arrangement as to suretyship.
 126. Discharge of surety by variance in terms of agreement.
 127. Discharge of surety by release or discharge of principal debtor.
 128. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue principal debtor.
 129. Agreement to give time to principal debtor made with a third person.
 130. Creditor's forbearance to sue.
 131. Release of one co-surety.
 132. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.
 133. Rights of surety on payment or performance.
 134. Surety's right to benefit of creditor's securities.
 135. Guarantee obtained by misrepresentation.
 136. Guarantee obtained by concealment.
 137. Guarantee on agreement that creditor shall not act on it until co-surety joins.
 138. Implied agreement to indemnify surety.
 139. Co-sureties liable to contribute equally.
 140. Liability of co-sureties bound in different sums.

PART VI.

OF BAILMENT.

141. 'Bailment', 'bailor' and 'bailee' defined.
 142. Delivery to bailee how made.
 143. Bailor's duty to disclose faults in goods bailed.
 144. Care to be taken by bailee.
 145. Bailee when not liable for loss, etc., of thing bailed.
 146. Termination of bailment by bailee's act inconsistent with conditions.
 147. Liability of bailee making unauthorized use of goods bailed.
 148. Mixture, with bailor's consent, of his goods with goods of bailee.
 149. Mixture, without bailor's consent, when the goods can be separated.
 150. Mixture, without bailor's consent, when the goods cannot be separated.

Section.

151. Repayment by bailor of necessary expenses.
 152. Restoration of goods bailed gratuitously.
 153. Return of goods bailed on expiration of time or accomplishment of purpose.
 154. Bailee's responsibility when goods are not duly delivered or tendered.
 155. Termination of gratuitous bailment by death.
 156. Increase or profit from goods bailed.
 157. Bailor's responsibility to bailee.
 158. Bailment by several joint owners.
 159. Re-delivery to bailor who has no title.
 160. Right of third person claiming goods bailed.
 161. Right of finder of goods.
 162. Bailee's particular lien.
 163. Bankers, factors and wharfingers have no general lien.
- Pledge.*
164. 'Pledge' 'pawnee' and 'pawnee' defined.
 165. Pawnee's right of retainer.
 166. In case of subsequent advances.
 167. Extraordinary expenses incurred by pawnee.
 168. Pawnee's right where pawnee makes default.
 169. Defaulting pawnee's right to redemption.
 170. Pledge by possessor of documentary title to goods.
 171. Pledge where pledgor has only a limited interest.

Suits against wrongdoers.

172. Suits by bailor or bailee against wrongdoers.
173. Apportionment of proceeds of such suits.

PART VII. OF AGENCY.

174. 'Agent' and 'principal' defined.
 175. Who may be a principal.
 176. Who may be an agent.
 177. Agency created without consideration.
 178. Agent's authority may be expressed or implied.
 179. Definitions of expressed and implied authority.
 180. Extent of agent's authority.
 181. Agent's authority in an emergency.
 182. Enforcement and consequences of agent's contracts.
 183. Principal how far bound when agent exceeds authority.
 184. When excess of agent's authority is not separable.
 185. 'Sub-agent' defined.
 186. When agent cannot delegate.
 187. Representation of principal by sub-agent properly appointed.
- Agent's responsibility for sub-agent.*
188. Agent's responsibility for sub-agent appointed without authority.
 189. Relation to principal of person named by agent authorized to name another to act for principal.
 190. Agent's duty in naming such person.
 191. Agent's duty in conducting principal's business.
 192. Skill and diligence required from agent.
 193. Agent's accounts.
 194. Agent's duty to communicate with principal.
 195. Agent dealing on his own account in business of agency without principal's consent.
 196. Agent dealing on his own account with principal in business of agency, not entitled to remuneration.
 197. Principal's right to benefit gained by agent dealing on his own account in business of agency.
 198. Agent's right of retainer out of sums received on principal's account.
 199. Agent's duty to pay sums received for principal.
 200. When agent's remuneration becomes due.
 201. Misconduct disentitles agent to remuneration.
 202. Agent's lien on principal's goods and papers.

Ratification.

203. Effect of ratification.
204. Ratification may be expressed or implied.
205. Knowledge requisite to valid ratification.
206. Effect of ratifying unauthorized act forming part of a transaction.
207. Ratification of unauthorized act cannot injure third person.
208. Consequences of notice given to agent.
209. Agent cannot personally enforce nor be bound by contracts on behalf of principal.
210. Implication of agreement to contrary.
211. Performance of contract with agent supposed to be principal.
212. Principal's liability where agent personally liable.

Section.

212. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.
213. Liability of pretended agent.
214. Person falsely contracting as agent, not entitled to performance.
215. Liability of principal inducing belief that agent's unauthorized acts were authorized.
216. Ship-master's authority to sign bill of lading.
217. Master's liability for injuries caused by his servant.
218. Employer's responsibility for injuries caused to third person in doing lawful act.
219. Responsibility for injuries arising from non-performance of act which a person is bound to do.
220. Compensation for injuries caused by act of person employed to do the act.
221. Master's liability for injury to one servant by misconduct, &c., of another.
222. Compensation to agent for injury caused by principal's neglect.
223. Profit resulting from agent's fraud.
224. Agent's responsibility for injuries arising from neglect.
225. Agent's responsibility for wrongful acts.
226. Termination of agency.
227. Where agency is coupled with an interest.
228. Revocation of agent's authority.
229. Revocation where authority has been partly exercised.
230. Compensation for revocation or renunciation.
231. Notice of revocation or renunciation.
232. Revocation and renunciation may be expressed or implied.
233. When termination of agent's authority takes effect.
234. Agent's duty on termination of agency by principals' death or insanity.
235. Termination of sub-agent's authority.

PART VIII.

OF PARTNERSHIP.

235. 'Partnership' defined.
 236. 'Firm' defined.
 237. Lender not a partner by advancing money for share of profits.
 238. Property left in business by retiring partner or deceased partner's representative.
 239. Contract for servant's remuneration by share of profits.
 240. Annuity out of profits to widow or child of deceased partner.
 241. Portion of profits received for sale of good-will.
 242. Responsibility of person leading another to believe him a partner.
 243. Liability of person permitting himself to be represented as a partner.
 244. Minor partner.
 245. Liability of minor partner on attaining majority.
 246. Partner's liability for debts of partnership.
 247. Partner's liability to third person for neglect or fraud of co-partner.
 248. Partner's power to bind co-partners.
 249. Annulment of agreement defining partners' rights and obligations.
 250. General rule determining partners' mutual relations.
 251. When Court may dissolve partnership.
 252. Dissolution of partnership by prohibition of business.
 253. Application of original terms to partnership continued under them.
 254. General duties of partners.
 255. Benefit derived from transaction affecting partnership.
 256. Profits made in competing business.
 257. Liability of incoming partner.
 258. Non-revocation of continuing guarantee by change in firm.
 259. Non-liability of deceased partner's estate for subsequent obligations.
 260. Payment of partnership-debts, and of separate debts.
 261. Continuance of partners' rights and obligations after dissolution.
 262. Notice of dissolution.
 263. Winding-up by Court after termination of partnership.
 264. Limited-liability partnerships, incorporated partnerships, and joint-stock companies.
- Schedule.*

Schedules.

- (1). Enactments repealed.
- (2). Enactments saved.

THE INDIAN CONTRACT LAW, 1867.

PART I.

PRELIMINARY.

1. This Act may be called the "Indian Contract Law, 1867."
2. In this Act,—unless there be something repugnant in the subject or context:—
- Words importing the singular number include the plural, words importing the plural number include the singular, and words importing the male sex include females;
- "Person" includes any Company or Association, or body of persons whether incorporated or not;
- "Child" in the case of anyone whose personal law permits adoption, includes an adopted child;
- "Immoveable property" includes land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;
- "Moveable property" means property of every description, except immoveable property;
- "British India" means the territories which are, or may become, vested in Her Majesty or Her Successors by the Statute 21 and 22 Vic., Cap. 106 (an Act for the better government of India).
3. The enactments specified in the first Schedule hereto, are repealed; but nothing herein contained shall be deemed to affect the enactments specified in the second Schedule hereto, nor any enactment of the Governor General of India in Council, the Lieutenant-Governor of Bengal in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council, relating to the emigration or transport or contracts of Native Labourers, or saving the members of Municipal Committees from personal liability.

PART II.

OF CONTRACT IN GENERAL.

4. A contract is an agreement between parties whereby a party engages to do a thing or engages not to do a thing.
- A contract may contain several engagements, and they may be either by the same party or by different parties.
- A contract may be expressed or implied, or partly expressed and partly implied.
- A contract or part of a contract may be expressed either orally or by writing.

A contract or part of a contract is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustrations.

- (a.) A. orally agrees with B. to buy of him at a certain price 500 maunds of rice. This is a contract expressed orally.
- (b.) A. orders of B., by writing, 500 maunds of rice at a certain price. B. by writing accepts the order. This is a contract expressed by writing.
- (c.) A. orally agrees with B. to buy of him 500 maunds of rice at a price to be fixed afterwards. The price is afterwards fixed by correspondence between A. and B. This is a contract expressed in part orally and in part by writing.
- (d.) A. orally orders B., a tailor, to make him a coat. B. accepts the order. The contract thus made contains an implied engagement by B. that the coat to be made for A. shall be of suitable materials, and shall fit A.; and an implied engagement by A. that he will accept the coat, and will pay for it, if within a reasonable time it shall be so made.
- (e.) A., by writing, orders of B. 500 maunds of the best rice, lying in his godowns. B. accepts the order. There is an implied engagement on A.'s part to pay a reasonable price for the rice.

5. Every person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may enter into a contract.

Explanation 1.—Persons who are deaf, or dumb, or blind, are not thereby incapacitated for entering into a contract if they are able to know what they do by it.

Explanation 2.—One who is ordinarily insane may make a contract during an interval in which he is of sound mind.

Explanation 3.—No person can enter into a contract while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

6. A proposal to enter into a contract may be retracted, or the terms of it altered by the party making it, at any time before it is accepted.

Explanation.—A proposal is said to be accepted when an expressed acceptance of it has been communicated to the proposer; or when a letter of acceptance is posted or a telegraphic message of acceptance is delivered at a proper office, and the acceptance by letter or telegram is not cancelled by some communication which reaches the proposer before or at the same time with the letter or telegram of acceptance; or when acceptance is to be inferred from the circumstances of the case.

Illustration.

A. sends goods to B. for sale or return. B. sells the goods to C. B. has accepted the goods.

7. A proposal does not bind the party making it, unless it be accepted within the time prescribed for its acceptance, or, if no time is prescribed, within a reasonable time.

8. Any engagement which a contracting party has been induced to form by effect of deceit, coercion and undue influence, renders the contract voidable at the option of that party.

Explanation 1.—Deceit may be practised on a person, not only by intentionally inducing him to believe what is not true, but by intentionally concealing truth from him.

Explanation 2.—In order to enable a party to annul a contract by reason of deceit, it must appear, where a false representation has been made, that he relied on the representation; and where the truth has been concealed, that he had not the means with ordinary diligence of discovering the truth.

Illustrations.

(a.) A., intending to deceive B., falsely represents that 500 maunds of indigo are made annually at A.'s factory, and thereby induces B. to buy the factory. The contract is voidable.

(b.) A., in order to deceive B., falsely informs him that 500 maunds of indigo are made annually at A.'s factory. B., not relying on this statement, examines the accounts of the factory, which show that only 400 maunds of indigo have been made. After this B. buys the factory. The contract is not voidable on account of A.'s mis-statement.

(c.) B. having discovered a seam of coal on A.'s estate, does not communicate that circumstance to A., and buys the estate at a price fixed by A. in ignorance of the existence of the coal. The sale is not voidable on account of B.'s conduct.

(d.) B. having discovered a vein of ore on the estate of A., adopts means to conceal and does conceal from A. the existence of the ore, so that A. cannot, with ordinary diligence, discern its existence. Through A.'s ignorance, B. is enabled to buy the estate at an undervalue. The sale is voidable.

(e.) A. is entitled to succeed to an estate at the death of B. B. dies. C., having received intelligence of B.'s death, conceals the fact from A., and induces A. to sell him his interest in the estate. The sale is voidable.

(f.) B., by deceit, induces A. to enter into an engagement with B. for the benefit of C., who is not privy to the deceit. The engagement is voidable.

(g.) A., a young female who has resided during her minority in the family of B., her guardian, continues to reside with him after attaining majority, and is induced, by means of his influence, to enter into a contract with him which is disadvantageous to herself. The contract is voidable.

9. A person who, either knowingly or ignorantly, makes a false representation whereby he induces another to enter into a contract with him, is bound to place the other in the same position as if the representation had been true, and in default of his doing so the contract is voidable at the option of the person who has been misled.

Explanation.—Where a party's consent to an engagement by contract has been given through a mistake as to the substance of the thing which is the subject of the engagement, and the mistake was occasioned, however innocently, by the other party, this has the same effect as a false representation.

Illustrations.

(a.) A. informs B. that A.'s estate is exempt from the payment of revenue to Government; B. thereupon buys the estate. It turns out that the estate is not exempt from

the payment of revenue, and that such exemption cannot be obtained. The sale is voidable.

(b.) A. informs B. that A.'s estate is within a mile of the town of Rāmāgar; B. thereupon buys the estate. The estate is found to be two miles from the town. The sale is voidable.

(c.) A. informs B. that A.'s estate is free from incumbrance. B. thereupon buys the estate. It turns out that the estate is subject to a mortgage. A. must redeem the mortgage; or if he cannot do so the contract is voidable.

(d.) A. and B. are partners in a mercantile business. A. is the managing partner; B. is ignorant of the state of the business. A. and B., in order to induce C. to become a partner with them, show him a statement of the affairs of the partnership, which is wrong by a large amount. C., relying upon the statement, joins the firm, and for several years does not discover the falsity of the statement. The contract of partnership is voidable at the option of C.

10. Where both the parties to an engagement by contract are under a mistake as to a matter of fact essential to the engagement, the engagement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the contract, is not to be considered a mistake as to a matter of fact.

Illustrations.

(a.) A. agrees to sell to B. a cargo of goods, supposed to be on its way from England to Bombay. It turns out that before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The contract is void.

(b.) A. buys of B. a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The sale is void.

(c.) A., being entitled to an estate for the life of B., agrees to sell it to C. B. was dead at the time of the contract, but both parties were ignorant of the fact. The contract is void.

11. The validity of a contract is not affected by the circumstance that a party was at the time of making it under a mistake of law.

Explanation.—A mistake in respect of a law not in force in British India, has the legal consequences of a mistake not of law but of fact.

Illustration.

A. owes to B. a debt, the payment of which at a fixed time is guaranteed by C. B. contracts with A. to give time to A., C. not assenting to the arrangement. B. is not aware, at the time of entering into this contract, that its legal effect will be to discharge C. from liability under his guarantee. B. is nevertheless bound by his contract to give time to A.

Certainty of subject. 12. The subject of every contract must be certain, or capable of being made certain.

Illustrations.

(a.) A. agrees to sell to B. "100 tons of oil," the kind of oil not being specified or in any way indicated. The contract is void for uncertainty.

(b.) A. agrees to sell to B. 100 tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to prevent the contract from being valid.

(c.) A., who is a dealer in coconut oil only, agrees to sell to B. "100 tons of oil." The nature of A.'s trade affords an indication of the meaning of the words, and A. has entered into a contract for the sale of 100 tons of coconut oil.

(d.) A. agrees to sell to B. "all the grain in his granary at Rāmāgar." There is no uncertainty here to prevent the contract from being valid.

(e.) A. agrees to sell to B. 1,000 maunds of rice at a price to be fixed by C. The subject of the contract is capable of being made certain, and there is no uncertainty here to prevent the contract from being valid.

Object and consideration.

Promise when binding.

13. In order to the validity of an engagement by contract there must be a lawful object and a good consideration.

First Exception.—A person who makes a promise, whether upon good consideration or not, is bound to perform it if the promise be expressed in writing and duly registered according to the provisions of the law for the time being in force for the registration of assurances, unless the promise is unlawful or is based on an unlawful consideration.

Second Exception.—A person who makes an express promise without good consideration is bound to perform it, if it be a promise to compensate wholly or in part a person who has already voluntarily done something which the person who makes the promise was legally compellable to do; or if it be a promise to pay wholly or in part a debt which the creditor is legally entitled to receive from the person who makes the promise, but of which, by reason of the law for the limitation of suits, he cannot enforce payment.

Explanation 1.—A good consideration must be something which, at the desire of the person entering into the engagement, another person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing.

Explanation 2.—A good consideration must be lawful.

Explanation 3.—An object, a consideration, or a promise is said to be lawful when it is not contrary to law or to morality.

Illustrations.

(a.) A. engages by contract with B. to sell his house to B. for 10,000 Rupees. Here there is an engagement by A. to B., and an engagement by B. to A., and these engagements are valid, there being in each case a lawful object and a good consideration.

(b.) A. agrees to sell his house at Rāmāgar to B. for 10,000 Rupees. Here the promise to pay the sum of 10,000 Rupees is the consideration for A.'s entering into the contract; and the promise to convey the house is the consideration for B.'s entering into the contract. These are good considerations.

(c.) A. engages to pay B. 1,000 Rupees at the end of six months if C., who owes that sum to B., fails to pay it. B. engages to grant time to C. accordingly. Here the engagement of each party is the consideration for the engagement of the other party; and they are good considerations.

(d.) A. engages, for a certain sum paid to him by B., to make good to B. the value of his ship if it shall perish by shipwreck on a certain voyage. Here A.'s promise is the consideration for B.'s payment, and B.'s payment is the consideration for A.'s promise; and these are good considerations.

(e.) A. engages to maintain B.'s child, and B. engages to pay A. 1,000 Rupees yearly for the purpose. Here the engagement of each party is the consideration for the engagement of the other party. They are good considerations.

(f.) A., B., and C. enter into a contract for the division among them of gains acquired or to be acquired by them by fraud. The contract is void.

(g.) A. undertakes to obtain for B. an employment in the public service, and B. agrees to pay 1,000 Rupees to A. The contract is void, as the consideration for it is illegal.

(h.) A., being agent for a landed proprietor, agrees, for money, without the knowledge of his principal, to obtain for B. a lease of land belonging to his principal. The

contract between A. and B. is void, being contrary to A.'s duty as agent.

(i.) A. engages with B. to drop a prosecution which he has instituted against B. for robbery, and B. engages to restore the value of the things taken. The contract is void.

(j.) A.'s estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B. upon an understanding with A. becomes the purchaser, and agrees to convey the estate to A. upon receiving from him the price which B. has paid. B.'s engagement is void, as it renders the transaction in effect a purchase by the defaulter.

(k.) A. engages to superintend on behalf of B. a legal manufacture of indigo and an illegal traffic in other articles. B. enters into an engagement to pay to A. a salary of 10,000 Rupees a year. B.'s engagement is void—the consideration being in part unlawful.

(l.) A. voluntarily pays B. a sum of money which is due to B. from C. Afterwards C. promises to reimburse A. C. is bound to perform the promise.

14. An engagement by contract may be made to take effect only in case a specified uncertain event shall happen. The event may be the performance of something that constitutes the consideration or part of the consideration for the engagement, or it may be an event distinct from such performance.

Illustrations.

(a.) A. sells goods to B. for a fixed price and engages to deliver them to him on receiving payment in full. A.'s engagement to deliver the goods does not become absolute until B. pays or tenders to him the price.

(b.) A. sells goods to B. for a fixed price, to be paid by instalments; and engages to deliver them to him on receiving payment of the first instalment. A.'s engagement to deliver the goods does not become absolute until B. pays or tenders to him the first instalment.

(c.) A. enters into an engagement by contract with B. to buy B.'s house for 10,000 Rupees if A. shall survive C. A.'s engagement does not become absolute until C. dies, leaving A. surviving him.

(d.) A. enters into an engagement by contract with B. to sell a horse to B. at a specified price in case C., to whom the horse has been offered, shall refuse to buy it. A.'s engagement does not become absolute until C. refuses to buy the horse.

15. An engagement by contract which is intended to take effect only in case a specified uncertain event shall not happen, does not become absolute until the happening of that event becomes impossible.

16. Where an engagement by contract is intended to take effect only in case a specified uncertain event shall happen within a fixed time, and the time expires without the event having occurred, the engagement becomes void. Where no time has been fixed for the happening of the event, the engagement becomes void as soon as it is ascertained that the event will not happen.

Illustrations.

(a.) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall return within a year from the time of the contract. The year elapses without the ship having returned. The engagement becomes void.

(b.) A. enters into an engagement by contract to pay B. a certain sum of money if C. shall leave a son surviving him. C. dies, not leaving a son surviving him. The engagement becomes void.

17. Where an engagement by contract is

When an engagement intended to take effect in case a specified event shall not happen, becomes absolute.

intended to take effect in case a specified event shall not happen within a fixed time, the engagement does not become absolute until the time has expired without the event having occurred, or until, before the time fixed, it is ascertained that the event will not occur. Where no time has been fixed the engagement becomes absolute as soon as it is ascertained that the event will not happen.

Illustrations.

(a.) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall not return within a year. At the end of six months it is ascertained that the ship has been lost. The engagement has become absolute.

(b.) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall not return. It is ascertained that the ship has been lost. The engagement has become absolute.

18. Where the order in which different en-

Order of performance of different engagements.

gagements are to be performed is not expressly fixed by the contract, it shall be that order which the nature of the transaction requires.

Illustrations.

(a.) A. enters into an engagement by contract to build a house for B. at a fixed price. B. engages to pay the price. B's engagement does not become absolute until A. finishes the house.

(b.) A., a tradesman, enters into an engagement by contract to make over his stock in trade to B. at a fixed price, and B. engages to give security for the payment of the money. A's engagement does not become absolute until the security is given; for the essence of the engagement is, that A. should have security before he delivers up his stock.

19. Where one of two engagements by con-

When one reciprocal engagement does not become absolute till performance of other.

tract has been entered into in consideration of the other, and a time is appointed for the performance of one of them, which time is to arrive before the reciprocal engagement can be performed, the latter does not become absolute until the former has been performed.

Illustrations.

(a.) A. contracts with B. to sell to him at a specified price certain merchandise on board a ship which cannot arrive for a month, and B. engages to pay for the merchandise within a week from the date of the contract. A's engagement does not become absolute until B's engagement has been fulfilled.

(b.) A. contracts with B. to sell him 100 bales of merchandise to be delivered next day, and B. engages to pay for them within a month. B's engagement does not become absolute until the merchandise has been delivered to him.

20. The parties to a contract are bound to

Parties mutually bound to facilitate performance.

afford to each other all reasonable facilities for performing their engagements.

21. Where an engagement by contract is in-

Liability of party preventing event on which contract is to take effect.

tended to take effect on the happening of an event, and the party who has entered into the engagement prevents the happening of the event, he becomes liable to perform the engagement, or to make compensation to the other party for any loss which he may have sustained in consequence of its non-performance.

Illustration.

A. engages to pay 1,000 Rupees to B., provided that B. shall execute certain work for him; and B. engages to ex-

ecute the work. B. is ready and willing to execute the work accordingly, but A. prevents him from doing so. A's engagement has become absolute.

22. When a person having entered into an

Liability of one party failing to do act which he is bound to do, and which is necessary to enable the other to perform.

engagement by contract with another fails to do an act which he is bound by law to do, and which is necessary to enable the other to perform his part of the contract, the party who has failed to do such act is liable to make compensation to the other party for any loss or damage which he may have sustained in consequence of the non-performance of it.

Illustrations.

(a.) A. hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A., B. receiving a certain freight for its conveyance. A. does not provide any cargo for the ship. A. must make compensation to B. for his failure.

(b.) A. enters into an engagement by contract with B. to execute certain builders' work, for a fixed price. B. supplying the scaffolding and timber necessary for the work. B. refuses to furnish any scaffolding or timber, and the work cannot be executed. B. is bound to make compensation to A. for any loss caused to him by the non-execution.

23. When there are mutual engagements by

When time is essential.

contract, and one of them is an entire and indivisible engagement by contract for the doing of a particular thing by a fixed time, time is of the essence of the contract, and unless the thing be done at the stipulated time the reciprocal engagement, if any, does not become absolute.

24. Where there are mutual engagements by

Effect of doing several things, but not at the times specified.

contract, and one of them is an engagement for the doing of several things at different times, and the things stipulated are done, but not at the times specified, this irregularity does not prevent the reciprocal engagement from becoming absolute, but the person who entered into the latter engagement is entitled to compensation for any loss which he may have sustained in consequence of the irregularity.

*Conditional Contract.***25. When an engagement by contract is con-**

Failure to fulfil condition.

ditional, and the condition fails to be fulfilled, the engagement becomes void.

Illustration.

A. engages to pay 10,000 Rupees to B. if he will marry A's daughter. A's daughter was dead at the date of the engagement. The condition cannot be fulfilled, and the engagement is void.

26. An engagement by contract may be made

Contract conditioned to be terminated or varied on the happening, or not happening, of a specified uncertain event.

with the condition superadded, that it shall be terminated or varied in case a specified uncertain event shall happen, or that it shall be terminated or varied in case a specified uncertain event shall not happen.

27. A condition of the kind described in the

When such conditions are invalid.

last preceding section is invalid and does not affect the engagement to which it is superadded, if at the time of the contract the event is impossible, or if it is repugnant to law or morality, or inconsistent with the main purpose of the contract.

28. An engagement to which is superadded a condition of the kind described in Section 26 becomes void if the fulfilment of the condition is, subsequently to the contract, rendered unlawful, or is made impossible by some unforeseen event which the person who entered into the engagement could not prevent.

Illustrations.

(a.) A. engages to pay B. 5,000 Rupees, provided that the engagement shall be void if A. takes in cargo for B. at a certain port. The Government afterwards declares war against the country in which the port is situated, so that A. cannot trade there. The engagement becomes void.

(b.) A., a singer, who has undertaken to sing at B.'s theatre, engages to pay B. 20,000 Rupees, provided that the engagement shall be void if A. sings at B.'s theatre on a certain number of nights in the month of June. A. before June loses his voice through illness. The engagement to pay 20,000 Rupees becomes void.

29. Where an engagement by contract is made with a condition superadded, that it shall be terminated or varied unless a certain person shall perform a specified act, but no time is specified for the performance of the act; if such person takes any step which renders impossible or indefinitely postpones the performance of the act required, the engagement shall be terminated or varied as if such person had died without performing the act.

30. If a condition of the kind described in Section 26 consists in doing one or the other of two things, and one of them is unlawful or impossible, the condition can only be fulfilled by doing the other.

Illustration.

A. engages by contract to pay B. a fixed sum, provided that if A. delivers to B. on a certain future day either 20 maunds of the finest rice, or a certain quantity of opium to be obtained contrary to law, the engagement shall be void. The condition cannot be fulfilled otherwise than by the delivery of 20 maunds of the finest rice.

31. A person who fails to do an act which he has engaged by contract to do, shall make compensation to the person in whose favour the act was to be done.

Exception.—A man incurs no liability through the non-performance of an act which he has engaged by contract to do, where, since the date of the contract, the performance of the act has been rendered unlawful, or has been made impossible by some event of which he did not, expressly or by implication, take upon himself the risk.

Illustrations.

(a.) A. engages to deliver to B. at a certain price, at a specified time and place, a cargo of merchandise then at sea in his ship. The ship is afterwards lost at sea, with all its cargo. A. is liable to make compensation to B. for the non-performance of his engagement.

(b.) A. freighted B.'s ship to proceed to the Island of Ichaboe, and there to take in a cargo of guano, to be supplied by A., and to convey it to a certain port. The guano at Ichaboe was entirely exhausted before the ship arrived, and it was impossible for A. to supply a cargo. A. must make compensation to B. for the non-performance of his engagement.

(c.) A., the owner of a music hall, agrees to let B. have the use of it for four days in June for the purpose of giving

concerts in it; B. to pay 1,000 Rupees a day. On the 30th of May the hall is accidentally destroyed by fire without the fault of either party. Neither party is bound to make compensation for the non-performance of the act which he engaged by the contract to do.

(d.) A., a painter, enters into an engagement to paint a picture for B. A. becomes blind. A. is not liable to make compensation to B. for not painting the picture.

(e.) A. engages to take in cargo at a certain port. The Government afterwards declares war against the country in which the port is situated, so that A. cannot trade there. He is not bound to make compensation for failure to take in cargo at the specified port.

Rule of Construction.

32. For the purpose of determining questions as to the meaning of a contract, Interpretation of a Court must inquire into every contracts. material fact relating to the situation of the parties to, or the subject-matter of such contract, and into every fact a knowledge of which may conduce to the right application of the words which the contracting parties have used.

Performance of Contract.

33. An engagement by contract must be performed by the person who has entered into it, unless its nature be such that it can be properly performed by another, in which case he may employ a competent person to perform it; or if he dies before performance, his representatives may perform it, or employ a competent person to do so.

Illustrations.

(a.) A. engages to pay B. a sum of money. He may perform this engagement, either by personally paying the money to B., or by causing it to be paid to B. by another; and if A. dies before the time appointed for payment, his representatives may perform the engagement.

(b.) A. engages to paint a picture for B. This engagement cannot be performed except by A.'s painting the picture himself.

34. Where a person who is entitled to claim from another the performance of an engagement accepts such performance from a third person, he cannot afterwards enforce it against the person who entered into the engagement.

35. A person who is entitled to claim performance of an engagement may dispense with or remit such performance wholly or in part, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(a.) A. engages to paint a picture for B. B. afterwards expressly forbids him to do so. A. is no longer bound to perform the engagement.

(b.) A. owes B. 5,000 Rupees. By agreement A. pays to B. and B. accepts, in satisfaction of the whole debt, 2,000 Rupees paid at the time and place at which the 5,000 Rupees were payable. The whole debt is discharged.

(c.) A. owes B. 5,000 Rupees. C. pays to B. 1,000 Rupees, and B. accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d.) A. owes B., under a contract, a sum of money the amount of which has not been ascertained. A., without ascertaining the amount, gives to B., and B., in satisfaction thereof, accepts the sum of 2,000 Rupees. This is a discharge of the whole debt, whatever may be its amount.

(e.) A. owes B. 2,000 Rupees, and is also indebted to other creditors. A. makes an arrangement with his creditors, including B., to pay them a composition of 8 annas in the rupee upon their respective demands. Payment to B. of 1,000 Rupees is a discharge of B.'s demand.

36. If a person who is entitled to claim the performance of an engagement by contract accepts a new and distinct contract by way of substitution for the existing one, the original engagement is no longer in force.

Acceptance of new contract in substitution.

Illustrations.

(a.) A. owes money to B. under a contract. It is agreed between A., B., and C. that B. shall thenceforth accept C. as his debtor instead of A. The old debt of A. to B. is at an end, and a new debt from C. to B. has been contracted.

(b.) A. owes B. 10,000 Rupees. A. enters into an arrangement with B. and gives him a mortgage of A.'s estate for 5,000 Rupees in place of the debt of 10,000 Rupees. This is a new contract.

(c.) A. and B. have mercantile transactions with each other, and A. thereby becomes indebted to B. in the sum of 10,000 Rupees, for which B. holds no security. Afterwards A. executes a bond in favour of B. to secure the payment of the sum due to him. The execution of this bond does not constitute a new and distinct contract.

(d.) A. owes B. 1,000 Rupees under a contract; B. owes C. 1,000 Rupees. B. orders A. to pay 1,000 Rupees to C. C. does not assent to the arrangement. B. still owes C. 1,000 Rupees, and no new contract has been entered into.

Time and place for performance.

37. Where by the contract a person is to perform his engagement without application by the person with whom he made the engagement and no time for performance is specified, the engagement must be performed within a reasonable time.

Time for performance of engagement where no time is specified, and no application to be made.

Explanation.—The question what is a reasonable time is in each particular case a question of fact.

38. When an engagement is to be performed on a certain day, and the person entering into the engagement has undertaken to perform it without application, he has the whole of that day to perform the engagement in; subject to this qualification, that the person who is to receive performance is not bound to receive it before or after the usual hours of business, or at any other place than that at which the engagement ought to be performed.

1022 1867

Illustration.

A. engages to deliver goods at B.'s warehouse on the 1st January. On that day A. brings the goods to B.'s warehouse, but after the usual hour for closing it, and they are not received. A. has not performed his engagement.

39. When the engagement is to be performed on a certain day, and the person entering into the engagement has not undertaken to perform it without application, it is the duty of the person in whose favour the engagement is made, to apply for performance at a proper time and place.

Explanation.—The question what is a proper time and place is in each particular case a question of fact.

Application for performance at a proper time and place.

40. Where an engagement is to be performed without application, and place is fixed for the performance of it, the person bound to the engagement must perform it at any reasonable place which the person with whom the engagement was made may appoint.

Place for performance of engagement, where no application to be made and no place fixed.

Illustration.

A. undertakes to pay B. 1,000 Rupees on a fixed day. A. must apply to B. to appoint a reasonable place for the purpose of receiving it, and must pay it to him at such place.

41. The performance is valid if made in any manner or at any time which the person entitled to claim performance may have prescribed, or may have subsequently sanctioned.

Performance in manner or at time prescribed or sanctioned by person entitled to claim it.

Illustrations.

(a.) B. owes A. 2,000 Rupees. A. desires B. to pay the amount to A.'s account with C., a banker. B., who deals with C., orders the amount to be transferred from his account to A.'s credit, and this is done by C. Afterward and before A. knows of this, C. fails. This is a good payment by B.

(b.) A. and B. are mutually indebted. A. and B. settle an account by setting off one item against another, and B. pays A. the balance found to be due from him upon such settlement. This amounts to a payment by A. and B. respectively of the sums which they owed to each other.

(c.) A. owes B. 2,000 Rupees. A. and B. agree that A. shall receive some of A.'s goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d.) A. owes B. 2,000 Rupees. A. gives to B., and B. accepts, a cheque for that amount drawn by A. This operates as payment, provided the cheque be duly paid.

(e.) A. desires B., who owes him a sum of money, to remit the amount of his debt by post. The debt is discharged as soon as B. puts into the post a letter containing the money, duly addressed to A.

Appropriation of Payments.

42. Where a man owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to some particular debt, the payment, if accepted, must be applied accordingly.

Where there are several distinct debts, and the debt to which payment is to be applied, is indicated.

Illustrations.

(a.) A. owes B. (among other debts) 1,000 Rupees upon a promissory note, which falls due on the 1st June. He owes B. no other debt of that amount. On the 1st June A. pays to B. 1,000 Rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A. owes to B. (among other debts) the sum of 567 Rupees. B. writes to A. and demands payment of this sum. A. sends to B. 567 Rupees. This payment is to be applied to the discharge of the debt of which B. had demanded payment.

43. Where the debtor has omitted to intimate, and there are no other circumstances indicating, to which debt the payment is to be applied, the creditor is at liberty to apply it at his discretion to any lawful debt actually due and payable to him from the payer, on giving notice thereof to the payer within a reasonable time.

Where there are several distinct debts, and the debt to which payment is to be applied, is not indicated.

44. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time. If they are

Where neither party makes any appropriation.

of equal standing, the payment shall be applied in discharge of each proportionately.

Offer of performance.

45. Where a person who has come under an engagement to another has made him an offer of performance, and the offer has not been accepted, the person who has made such offer is not responsible for non-performance so caused, nor does he thereby lose his title to claim performance of any reciprocal engagement.

Effect of refusal to accept offer of performance.

46. In order to constitute a valid offer of performance, the following rules must be observed:—

1st.—The offer must be made at a proper time and place and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining whether the thing tendered really is what it purports to be.

2nd.—The offer must be a tender of the whole thing which the other party to the engagement is entitled to demand.

3rd.—It must be unconditional.

4th.—An offer to one of several joint creditors has the same legal consequences as an offer to all of them.

Explanation.—Where the performance of an engagement would involve the production of a certain thing, it is not necessary to the validity of a tender that the thing should actually be produced, if the person entitled to claim performance does not require that it should be produced.

Joint liabilities and rights.

47. When two persons have jointly come under an engagement by contract to a third person, then, unless a contrary intention appears by the contract, the liability to perform the engagement rests, as between them and him, on those two persons during their joint lives, and after the death of either, on his representative jointly with the survivor, and after the death of the survivor, on the representatives of both jointly.

48. As between themselves, persons who have jointly come under an engagement are bound (unless a contrary intention appears by the contract) to bear the burden of its performance equally; and if one of them is unable to bear his share of the burden, the others must make up the deficiency by equal contributions.

Explanation.—This rule is not to prevent a surety from recovering his disbursements from the principal, or to entitle the principal to recover anything from the surety.

Illustrations.

(a.) A., B. and C. are under a joint engagement to pay D. the sum of 3,000 Rupees. A. is insolvent, but his assets are sufficient to pay one-half of his debts. A.'s estate pays 500 Rupees. B. and C. must pay 1,250 Rupees each.

(b.) A., B. and C. are under a joint engagement to pay D. 3,000 Rupees, A. and B. being in fact only sureties for C. C. is unable to pay anything, and A. pays the whole. A. is entitled to receive 1,500 Rupees from B.

(c.) A., B. and C. are under a joint engagement to pay D. 3,000 Rupees, A. and B. being in fact only sureties for C. C. is unable to pay; A. and B. are compelled to pay the whole sum. They are entitled to recover it from C.

49. Where two persons have jointly come under an engagement by contract to a third person, a release of one of them by such third person does not discharge the other; neither does it free that one from responsibility to the other.

Release of one joint contractor.

50. When a person has come under an engagement by contract to two other persons jointly, then, unless a contrary intention appears by the contract, the right to claim performance rests (as between him and them) with them during their joint lives, and after the death of either, with his representative jointly with the survivor, and after the death of the survivor, with the representatives of both jointly.

Devolution of joint rights.

Illustration.

A., in consideration of 5,000 Rupees lent to him by B. and C., enters into an engagement by contract with B. and C. to repay them that sum with interest on a day specified. B. dies. The right to claim performance rests with B.'s representative jointly with C., during C.'s life, and after the death of C. with the representatives of B. and C. jointly.

Power to terminate contract.

51. When a party to a contract has refused to perform, or disabled himself from performing, his engagements in its entirety, the party who has entered into the reciprocal engagement may put an end to the contract, provided he has not signified, expressly or impliedly, that he acquiesced in its continuance.

Power to terminate contract on refusal of party to perform it wholly.

Illustrations.

(a.) A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B. engages to pay her 100 Rupees for each night's performance. On the sixth night the singer wilfully absents herself from the theatre. B. is at liberty to put an end to the contract.

(b.) A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre two nights in every week, during the next two months; and B. engages to pay her at the rate of 100 Rupees for each night. On the sixth night the singer wilfully absents herself. With the assent of B. she sings on the seventh night. B. has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through her failure.

Compensation.

52. A person who rightfully puts an end to an engagement, is entitled to compensation for any damage he has sustained.

Party rightfully terminating contract, entitled to compensation.

53. When a contract has been broken, if a sum is named in the contract itself as the amount to be paid in case of such breach, the amount so named shall be paid accordingly; but if no sum has been named in the contract itself, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for loss or damage caused to him thereby: Provided that it has naturally arisen in the usual course of things from such breach, or that it was in the knowledge of the parties at the time they made the contract, that such loss or damage would probably result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Payment of sum specified to be paid in case of breach.

Payment of compensation.

Explanation.—In estimating the loss, the means which existed of remedying the inconvenience caused by the non-performance of the engagement, must be taken into account.

Illustrations.

(a.) A. enters into an engagement by contract, that in case he fails to pay B. 500 Rupees on a certain day, he shall immediately become liable to pay him 1,000 Rupees. A. fails to pay B. 500 Rupees on the day named. A. has become liable to pay B. 1,000 Rupees.

(b.) A. enters into an engagement by contract, that if he practises as a surgeon in the town of Z., he shall pay B. 5,000 Rupees. A. commits a breach of the engagement. The sum of 5,000 Rupees is actually payable by A. to B.

(c.) A. agrees to sell and deliver 50 maunds of saltpetre to B. at a certain price, to be paid on delivery. A. breaks his engagement. B. is entitled to receive from A., by way of compensation, the sum, if any, by which the contract price falls short of the price for which B. might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(d.) A. hires B.'s ship to go to Bombay, and there take on board on the 1st of January a cargo (which A. is to provide) and to bring it to Calcutta; the freight to be paid when earned. B.'s ship does not go to Bombay, but A. has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A. avails himself of those opportunities, but is put to trouble and expense in doing so. A. is entitled to receive compensation from B. in respect of such trouble and expense.

(e.) A. agrees to sell and deliver to B. on the 1st of January, at a stated price, a certain quantity of cotton, to be paid for on delivery. Afterwards, on the 1st December, A. announces to B. that he does not intend to perform his engagement, and on the 1st of January he delivers no cotton to B. B. is entitled to receive from A., by way of compensation, the excess, if any, of price of the like quantity of cotton on the 1st of January over the contract price.

(f.) A. agrees to sell and deliver to B. on the 1st of January a certain quantity of sugar, for which B. pays him in advance. Afterwards, on the 1st of December, A. informs B. that he does not intend to deliver the sugar, and on the 1st of January he does not deliver it. B. is entitled to receive from A. the money paid, together with current mercantile interest, and also by way of compensation, the excess, if any, of the sum for which the sugar could have been procured by him on the 1st of January, over the sum paid in advance.

(g.) A. agrees to buy of B., at a stated price, 50 maunds of rice, no time being fixed for delivery. A. afterwards intimates to B. that he will not accept the rice if tendered to him. B. is entitled to receive from A., by way of compensation, the amount, if any, by which the contract price exceeds that which B. could have obtained for the rice at the time of the refusal.

(h.) A. agrees to buy B.'s ship for 60,000 Rupees, but breaks his engagement. A. must pay to B., by way of compensation, the excess, if any, of the contract price over the price which B. can obtain for the ship at the time of the breach of engagement.

(i.) A. agrees to buy of B., at a stated price, 100 bales of jute, to be delivered on the 1st of January. Afterwards, on the 15th of December, A. gives notice to B. that he will not accept the jute; on the 1st of January the jute is tendered to A., who refuses to accept it. A. must pay to B., by way of compensation, the excess, if any, of the contract price over the sum which B. could obtain for the jute on the 1st of January.

(j.) A., the owner of a boat, enters into an engagement by contract with B. to take a cargo of jute to Mirzapore, for sale at that place, starting on a specified day. The boat does not start at the time appointed, whereby the arrival of the cargo at Mirzapore is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B. by A., is the difference between the price which B. could have obtained for the cargo at Mirzapore at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(k.) A. engages to repair B.'s house in a certain manner, and receives payment in advance. A. repairs the house, but

not according to contract. B. is entitled to recover from A. the cost of making the repairs conform to the engagement.

(l.) A. agrees to let his ship to B. for a year from the 1st of January next for a certain price. Freight rises, and on the 1st of January the hire obtainable for the ship is higher than the contract price. A. breaks his engagement. He must pay to B., by way of compensation, a sum equal to the difference between the contract price and the hire which could be obtained for the use of the ship on the 1st of January.

(m.) A. engages to supply B. with a certain quantity of iron at a fixed price, being a higher price than that for which A. could procure and deliver the iron. B. wrongfully refused to receive the iron. B. must pay to A., by way of compensation the difference between the contract price of the iron and the sum for which A. could have obtained and delivered it.

(n.) A. delivers to B., a common carrier, a machine, to be conveyed, without delay, to A.'s mill, informing B. that his mill is stopped for want of the machine. B. unreasonably delays the delivery of the machine, and A. in consequence loses a profitable contract with the Government. A. is entitled to receive from B., by way of compensation, the average amount of profit which would have been made by the use of such machine during the time that delivery of it was delayed, but not to the loss sustained by not obtaining the Government contract.

(o.) A. having entered into an engagement with B. to supply B. with 1,000 tons of iron at 100 Rupees a ton, to be delivered at a stated time, enters into an agreement with C. for the purchase of a certain quantity of iron at 80 Rupees a ton, telling C. that he does so for the purpose of performing his engagement with B. C. fails to fulfil his engagement with A., who cannot procure other iron, and, in consequence, fails to fulfil his engagement with B. C. must pay to A. 20,000 Rupees, being the profit which A. would have made by the performance of his engagement.

(p.) A. entered into an engagement with B. to make and deliver to B. by a fixed day, for a specified price, a certain piece of machinery. A. did not deliver the piece of machinery at the time specified, and in consequence of this B. was obliged to procure another, at a higher price than that which he was to have paid to A., and was prevented from fulfilling an engagement under which he lay to a third person at the time of his contract with A. (but which had not been then communicated to A.), and was compelled to make compensation for breach of his engagement. A. must pay to B., by way of compensation, the difference between the contract-price of the piece of machinery and the sum paid by B. for another, but not the sum paid by A. to the third person by way of compensation.

(q.) A., a builder, undertakes to erect and finish a house by the 1st of January, in order that B. may give possession of it at that time to C., to whom B. has agreed to let it. A. is informed of the agreement between B. and C. A. builds the house so badly that before the 1st of January it falls down, and has to be rebuilt by B., who in consequence loses the rent which he was to have received from C., and is obliged to make compensation to C. for the breach of his engagement. A. must make compensation to B. for the cost of re-building the house, for the rent lost, and for the compensation made.

(r.) A. sells certain merchandise to B., warranting it to be of a particular quality, and B., in reliance upon this warranty, sells it to C. with a similar warranty. The warranties are broken, and B. becomes liable to pay C. a sum of money by way of compensation. B. is entitled to be reimbursed this sum by A.

(s.) A. engages to supply B. with a threshing machine, on the 15th of August; he is aware at the time of entering into the engagement that B. is in the habit of threshing out his wheat in the field, and sending it off at once to market. A. did not supply the machine on the 15th of August, but assured B. from day to day that it would be delivered shortly. He delivered the machine on the 11th of September. In consequence of the non-delivery of the machine, it became necessary for A. to carry the wheat home and stack it; it was injured by exposure to the weather, and had to be dried at a great expense; its quality was much deteriorated, and before it could be sold the market price of wheat had fallen. B. in consequence of these events is unable to pay a judgment debt to C., who seizes and sells his property in execution. A. must make compensation to B. in respect of the expenses of carrying, stacking, and drying the wheat, and in respect of its deterioration in quality; but not in respect of the loss sustained by B. through the fall in the market price of wheat, nor in respect of the seizure of his property.

(d.) A. has entered into an engagement by contract to pay a sum of money to B. on a day specified. A. does not pay the money on the day appointed. B., in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A. is not liable to make good to B. anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(e.) A. engaged to deliver 50 maunds of saltpetre to B. on the 1st of January at a certain price. B. afterwards before the 1st of January agreed to sell the saltpetre to C. at a price higher than the market price of the 1st of January. A. broke his engagement. In estimating the compensation payable by A. to B. the market price of the 1st of January, and not the profit which would have arisen to B. from the sale to C. is to be taken into account.

(f.) A. engaged to sell and deliver 500 bales of cotton to B. on a fixed day. A. broke his engagement, and B. having no cotton, was obliged to close his mill. A. is not responsible to B. for the loss caused to B. by the closing of his mill.

(g.) A. agreed to sell and deliver to B. on the 1st of January certain cloth which B. intended to manufacture into caps of a particular kind, for which there was no demand, except at that season. The cloth was not delivered till long after the appointed time, and too late to be used that year in making caps. A. is entitled to receive from B., by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(h.) A., a ship-owner, agreed with B. to convey him from Calcutta to Sydney in A.'s ship, sailing on the 1st of January; and B. paid to A. by way of deposit one-half of his passage money. The ship did not sail on the 1st of January, and B. after being in consequence detained in Calcutta for some time, and thereby put to some expense, proceeded to Sydney in another vessel, and in consequence, arriving too late in Sydney, lost a sum of money. A. is liable to repay to B. his deposit with interest, and the expense to which he was put by his detention in Calcutta, but not the sum of money which he lost by arriving in Sydney too late.

PART III.

ON CERTAIN OBLIGATIONS RESEMBLING THOSE CREATED BY CONTRACT.

54. Where a person has, either by words spoken or written, or by his conduct, led another to believe that a certain state of things exists which does not really exist, with the intention that the other shall act upon such belief in a transaction between

them, and the other accordingly acts upon such belief; the person who has caused such belief is bound to place the other in the same position as if such a state of things had existed, or, in default, to make compensation to the other in respect of any loss or damage which he has incurred by acting upon such belief.

55. A person who, by a false representation, induces another to enter into a contract with a third party, is bound to make good the representation if he knew it to be false, or if in the due discharge of his duty he ought to have known it to be so.

Illustrations.

(a.) A. is trustee for B. of certain property. B. creates a charge upon the trust property, of which notice is given to A. B. afterwards enters into treaty with C. for the sale of the property. C. asks A. whether the property is incumbered or not. A. not remembering the matter, replies in the negative, and C. thereupon buys the property. A. as

well as B. is responsible for the discharge of the incumbrance.

(b.) A. conveys his property to B., upon a secret trust for A.'s benefit and permits B. to appear as the owner of it. B. alienates the property to a person who is not aware of the trust. A. cannot dispute the alienation.

(c.) A. being applied to by B. for merchandise upon credit, asks C. whether B. is in good circumstances. C., knowing B. to be deeply in debt, with the intention of inducing A. to comply with B.'s wishes, replies that B. is in good circumstances. In consequence of this reply, A. lets B. have the merchandise on credit. B. becomes insolvent before the time for payment arrives. C. is liable to make good to A. the value of the merchandise.

(d.) C., without any particular knowledge of B.'s means, speaks of him in the presence of A. as a person in good circumstances. A. in consequence lets B. have merchandise on credit. B. becomes insolvent. C. is not liable to make good to A. the value of the merchandise.

56. If one person makes a deliberate statement as to his own future conduct to another, with the intent that it should be acted upon, and the other acts upon the faith of such assurance, the person who made the statement must make it good.

Illustration.

A. holding a decree against B., and knowing that B. is desirous to be married to C., assures the father of C. that he will never enforce the execution of the decree against B. C.'s father, relying on this assurance, permits the marriage to take place. A. is not entitled to enforce the execution of the decree.

57. If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a.) A. supplies B., a minor, with necessaries suitable to his condition in life. A. is entitled to be reimbursed from B.'s property.

(b.) A. supplies the wife and children of B., a lunatic, with necessaries suitable to their condition in life. A. is entitled to be reimbursed from B.'s property.

58. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

A. holds some land in Bengal as zamindar. B. holds the land on a lease granted by A. The revenue payable by A. to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B.'s lease. B., to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A. is bound to make good to B. the amount so paid.

59. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and the other enjoys the benefit thereof, the latter is bound to restore or to make compensation to the former in respect of the thing so done or delivered.

This rule shall apply, notwithstanding that there shall have been a larger contract between the parties, which has been put an end to by reason of a breach thereof.

Illustrations.

(a.) A., a tradesman, leaves goods at B.'s house by mistake. B. treats the goods as his own. He is bound to pay A. for them.

(b.) A. contracts with B. to deliver to him 250 maunds of rice before the 1st of May. A. delivers 130 maunds only before that day and none after. B. retains the 130 maunds after the 1st of May. He is bound to pay A. for them.

(c.) A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B. engages to pay her 100 Rupees for each night's performance; on the sixth night the singer wilfully absents herself from the theatre, and B. in consequence puts an end to the engagement. B. must pay A. for the five nights on which she had sung.

60. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

Responsibility of finder of goods.

Liability of person to whom money is paid by mistake or coercion.

61. A person to whom money has been paid by mistake or under coercion is liable to repay it.

Illustration.

A. and B. jointly owe 100 Rupees to C. A. alone pays the amount to C., and B., not knowing this fact, pays 100 Rupees over again to C. C. is bound to repay the amount to B.

PART IV.

SALE OF GOODS.

62. In the following Chapter the word "goods" is used to denote every kind of moveable property.

"Goods" defined.

63. Sale is the exchange of anything which is property for a price. It involves the transference of the ownership of the thing sold from the seller to the buyer.

"Sale" defined.

64. Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods, together with payment of the price or delivery of the goods, or with tender, part payment, earnest, or part delivery, or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Sale how effected.

Illustrations.

(a.) B. offers to buy A.'s horse for 500 Rupees. A. accepts the offer, and tells B. to take away the horse. The horse has been sold to B.

(b.) A. sends goods to B., with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B. retains the goods, and informs A. that he approves of them. The goods have been sold to B.

(c.) B. offers A. for his horse 1,000 Rupees, the horse to be delivered to B. on a stated day, and the price to be paid on another stated day. A. accepts the offer. The horse has been sold to B. by offer and acceptance with an agreement to postpone delivery and payment.

(d.) B. offers A. for his horse 1,000 Rupees, on a month's credit. A. accepts the offer. The horse has been sold to B. by offer and acceptance with an agreement to postpone the payment.

(e.) B., on the 1st January 1863, offers to A. for a quantity of rice 2,000 Rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A. accepts the offer. The rice has been sold to B.

65. By an agreement for the sale of a thing which has yet to be ascertained, made, or finished, no ownership of any portion of that thing passes to the buyer until it is ascertained, made, or finished.

Effect of agreement for sale of thing to be ascertained, made, or finished.

which has yet to be ascertained, made, or finished, no ownership of any portion of that thing passes to the buyer until it is ascertained, made, or finished.

Illustration.

B. orders A., a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B. pays to A. money from time to time on account of the price. The ownership of the barge does not pass to B. until it is finished.

66. Where by an agreement for the sale of goods the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Sale of goods which the seller is to put into state in which buyer is to take them.

goods the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustrations.

(a.) A., a ship-builder, agrees to sell to B. for a stated price, a vessel which is lying in A.'s yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the agreement a sale is not effected until the vessel has been rigged, fitted up, and delivered.

(b.) A. contracts to build a ship for B. for a price, payable by instalments dependent on the progress of the building of the ship, and the ship is to be built under B.'s superintendence. The ownership of the materials incorporated with the ship passes to B. at the time of incorporation, as this was intended by the parties, but the materials lying in A.'s yard, though suited and intended for the ship, do not pass to B. until they are actually incorporated with the ship.

67. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Sale of goods when seller has to do anything thereto in order to ascertain price.

the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(a.) A., owner of a stack of bark, agrees to sell it to B. at 100 Rupees per ton; B. agrees to take and pay for it on a certain day. Part is weighed and delivered to B.; the ownership of the residue is not transferred to B. until it has been weighed pursuant to the contract.

(b.) A. agrees to sell a heap of clay to B. at a certain price per ton; B. is by the agreement to load the clay in his own carts, and to weigh each load at a certain weighing machine which his carts must pass over on their way from A.'s ground to B.'s place of deposit. Here nothing more remains to be done by the seller, the sale is complete, and the ownership of the heap of clay is transferred at once.

68. Where the goods are not ascertained at the time of making the agreement for sale it is necessary to the completion of the sale that the goods shall be ascertained.

Sale when goods are unascertained at date of agreement.

the goods are not ascertained at the time of making the agreement for sale it is necessary to the completion of the sale that the goods shall be ascertained.

Illustration.

A. agrees to sell to B. twenty tons of oil in A.'s cisterns. A.'s cisterns contain more than twenty tons of oil. B. has not acquired the ownership of any portion of the oil.

69. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Ascertainment of goods by subsequent appropriation.

the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, agrees to sell B. 20 hogsheads of it. After the agreement, A. fills 20 hogsheads with the sugar, and gives notice to B. that the hogsheads are ready, and requires him to take them away. B. says he will take them as soon as he can. By this appropriation by A. and assent by B., the ownership passes to B.

70. Where the goods are not ascertained at the time of making the agreement for sale, and by the terms of the agreement the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the agreement, and by his doing so the goods are ascertained.

Ascertainment of goods by seller's selection.

Illustration.

B. agrees with A. to purchase of him at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A.'s granary. It is agreed that B. shall send sacks for the rice, and that A. shall put the rice into them. B. does so, and A. puts 50 maunds of rice into the sacks. The goods have been ascertained.

71. Where an agreement is made for the sale of immovable and moveable property combined, the ownership of the moveable property does not pass before the transference of the immovable property.

Agreement for sale of immovable and moveable property combined.

Illustration.

A. agrees with B. for the sale of a house and furniture. The ownership of the furniture does not pass to B. until the house is conveyed to B.

72. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale of several lots by auction.

73. A buyer of goods sold has to bear any loss arising from the destruction or injury of the goods.

Buyer's risk.

Illustration.

B. offers and A. accepts 100 Rupees for a stack of fire-wood standing on A.'s premises, the fire-wood to be allowed to remain on A.'s premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A.'s premises, it is accidentally destroyed by fire. B. must bear the loss.

74. A valid agreement for the sale of goods may be made either by word of mouth or by writing.

Agreement for sale may be oral or written.

75. The ownership of goods may be acquired by buying them from any person who is in possession of them; Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them.

Acquisition of ownership of goods by purchase from their possessor.

Illustrations.

(a.) A. steals a cow from B. and sells it at a cattle-market to C., a purchaser, in good faith. A. is afterwards convicted of the theft. B. cannot recover the cow from C.

(b.) A., a person whose rank and occupation are not such as to account for his having plate in his possession, sells a piece of plate to B. without giving a satisfactory explanation of the manner in which he had become possessed of it. The plate had, in fact, been stolen from C. C., on proof of the theft, can recover the plate from B.

(c.) A., a commercial agent, to whom goods have been consigned with instructions not to sell them without reference to the consignor, sells them to B., who has no ground for a reasonable presumption that A. has no right to sell them. The consignor cannot disturb the sale.

(d.) A., a commercial agent, to whom goods have been consigned with instructions not to sell them without reference to the consignor, sells them, without such reference, to B. who is acquainted with the instructions given to A. The sale is void as against the consignor.

76. The ownership of goods may be acquired by buying them from any person who is in possession of

Acquisition by purchase from possessor of documentary title.

bill of lading, dock-warrant, warehouse keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other documentary title to the goods: Provided that the buyer acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the document has no right to sell the goods.

Illustration.

A. sells to B. goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C., and it has not been indorsed by C. The sale is not valid.

77. Under an agreement for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts which, after the goods are produced, are done in pursuance of the agreement by the seller, or by the buyer with the seller's assent.

Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(a.) A. agrees to sell to B. for a stated price all the indigo which shall be produced at A.'s factory during the ensuing year. A., when the indigo has been manufactured, gives to B. an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B. from the date of the acknowledgment.

(b.) A. for a stated price agrees that B. may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this agreement B., with the assent of A., takes possession of some crops grown in succession to the crops standing at the time of the agreement. The ownership of the crops when taken vests in B.

(c.) A. for a stated price agrees that B. may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this agreement B. applies to A. for possession of some crops grown in succession to the crops which were standing at the time of the agreement. A. refuses to give possession. The ownership of the crops does not pass to B.

78. An agreement for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the agreement, and though at that time he has no reasonable expectation of acquiring them otherwise than by purchase.

Contract to sell and deliver at a future day goods not in seller's possession at date of contract.

Illustration.

A. agrees on the 1st January to sell B. 50 shares in the East Indian Railway Company, to be delivered and paid for on the 1st March of the same year. A., at the time of making the agreement, is not in possession of any shares. The agreement is valid.

79. Where there has been a sale, or an agreement to sell, and the amount of the price has not been fixed, it shall be determined by the consideration of what is just and reasonable.

Determination of unfixed price.

Illustration.

B., living at Paina, orders of A., a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the amount of it must be determined by the consideration of what is just and reasonable.

Delivery.

80. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

(a.) A. sells to B. a horse, and causes or permits it to be removed from A.'s stables to B.'s. This is a delivery.

(b.) B. in England orders 100 bales of cotton from A., a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c.) A. sells to B. certain specific goods which are locked up in a godown. A. gives B. the key of the godown in order that he may get the goods. This is a delivery.

(d.) A. sells to B. five specific casks of oil. The oil is in the warehouse of A. B. sells the five casks to C. A. receives warehouse rent for them from C. This amounts to a delivery of the oil to C., as it shows an assent on the part of A. to hold the goods as warehouseman of C.

(e.) A. sells to B. 50 maunds of rice in the possession of C., a warehouseman. A. gives B. an order to C. to transfer the rice to B., and C. assents to such order, and transfers the rice in his books to B. This is a delivery.

(f.) A. agrees to sell B. five tons of oil at 1,000 Rupees per ton, to be paid for at the time of delivery. A. gives to C., a wharfinger, at whose wharf he had 20 tons of the oil, an order to transfer five of them into the name of B. C. makes the transfer in his books, and gives A.'s clerk a notice of the transfer for B. A.'s clerk takes the transfer-notice to B., and offers to give it him on payment of the bill. B. refuses to pay. There has been no delivery to B., as B. never assented to make C. his agent to hold for him the five tons selected by A.

81. A delivery to a wharfinger or carrier of the goods sold, which do not reach the buyer, does not render the buyer liable for the price, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe delivery of the goods.

Effect of delivery to wharfinger or carrier.

Illustration.

B., at Agra, orders of A., who lives at Calcutta, three casks of oil to be sent to him by railway. A. takes three casks of oil directed to B. to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the railway company responsible for their safety. This is not a sufficient delivery to charge B. in a suit for the price, if the goods are not delivered to the buyer.

82. A delivery of part of the goods in progress of the delivery of the whole has the same legal effect as a delivery of the whole; but a delivery of part of the goods with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Effect of part-delivery.

Illustrations.

(a.) A ship arrives in a harbour laden with a cargo consigned to A., the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A. in progress of the delivery of the whole. This is a delivery of the cargo to A.

(b.) A. sells to B. a stack of fire-wood, to be paid for by bill on delivery. After the sale, B. applies for and obtains from A. leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(c.) A. sells 50 maunds of rice to B. The rice remains in A.'s warehouse. After the sale, B. sells to C. 10 maunds of the rice, and A., at B.'s desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for possession.

83. In the absence of any special agreement, the seller of goods is not bound to deliver them until the buyer applies for possession.

84. In the absence of any agreement as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement for sale, or, if not then in existence, at the place at which they are produced.

Place of delivery.

Seller's lien.

85. Unless a contrary intention appears by the agreement, a seller has a lien on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.

Seller's lien.

86. Where by the agreement the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, the seller may retain the goods for the price.

Lien where payment to be made at a future day, but no time fixed for delivery.

Insolvency defined.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A. sells to B. a quantity of sugar in A.'s warehouse. Payment is agreed to be made by a bill of exchange at three months. B. gives A. the bill of exchange, but allows the sugar to remain in A.'s warehouse. Before the bill falls due B. stops payment. A. may retain the goods for the price.

87. Where by the agreement the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Where payment to be made at future day, and buyer allows goods to remain in seller's possession.

Illustration.

A. sells to B. a quantity of sugar in A.'s warehouse. Payment is agreed to be made by a bill of exchange at three months. B. gives the bill of exchange, but allows the sugar to remain in the warehouse. The bill is dishonoured. A. may retain the goods for the price.

88. A seller in possession of goods sold may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Seller's lien against subsequent buyer.

Illustrations.

(a.) A. sells to B. at three months' credit a chest of tea then in the custody of X., a wharfinger. A. gives B. a delivery order for the tea, and before the expiration for the credit, B. resells the tea to C. for cash, and transfers to him the delivery order. B. stops payment before C. obtains possession under the order. A. may countermand the order to X., and retain the goods against C.

(b.) A. sells to B. a cargo of sugar then in the warehouse of A. B., according to the terms of the sale, gives A. his acceptance at three months for the price of the sugar. B. sells

the sugar to C. for cash, and gives C. an order addressed to A., requesting him to deliver the sugar to C. A. assents to the delivery order and agrees to hold for C. Afterwards B. becomes insolvent, and his acceptance is dishonoured. A. cannot retain the goods against C.

Stoppage in Transit.

89. A seller who has parted with the possession of the goods, and has not received the whole price, may, in the event of the buyer becoming insolvent, stop the goods while they are in transit to the buyer.

90. Goods are to be deemed in transit while they are in the possession of the carrier or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer, or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(a.) B., living at Madras, orders goods of A. at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C. a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C., are in transit.

(b.) B. at Delhi orders goods of A. at Calcutta. A. consigns and forwards the goods to B. at Delhi. On arrival there, they are taken to the warehouse of B. and left there. B. refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B., who lives at Puna, orders goods of A. at Bombay. A. sends them to Puna by C., a carrier appointed by B. The goods arrive at Puna, and are placed by C., at B.'s request, in C.'s warehouse for B. The goods are no longer in transit.

(d.) B., a merchant of London, orders 100 bales of cotton of A., a merchant at Bombay. B. sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

91. The right of stoppage does not cease on the buyer's re-selling the goods while in transit, and receiving the price; but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

92. The right of stoppage ceases, if the buyer, while the goods are in transit, assigns a bill of lading in respect of them to a second buyer in good faith for valuable consideration.

Illustrations.

(a.) A. sells and consigns certain goods to B. A. being still unpaid, B. becomes insolvent, and while the goods are in transit assigns the bill of lading for cash to C., who is not aware of his insolvency. A. cannot stop the goods in transit.

(b.) A. sells and consigns certain goods to B. A. being still unpaid, B. becomes insolvent, and while the goods are still in transit assigns the bill of lading for cash to C., who knows that B. is insolvent. The assignment not being in good faith, A. may still stop the goods in transit.

93. Where a bill of lading is not negotiable until a certain condition has been fulfilled, the right of stoppage does not cease until such condition has been fulfilled.

Illustration.

A. sells and despatches goods to B. and sends him a letter enclosing the bill of lading, and directing him not to part with it until he has accepted certain bills of exchange which A. has drawn against the consignment. B., without accepting the bills of exchange, assigns the bill of lading to a buyer

in good faith for a valuable consideration. A.'s right of stoppage does not cease upon such assignment.

94. Where a bill of lading is assigned by the buyer by way of pledge to secure an advance which has been made upon it in good faith, the seller may, on payment or tender to the pledgee of the amount of his claim, stop the goods in transit.

Illustrations.

(a.) A. sells and consigns goods to B. of the value of 12,000 Rupees. B. assigns the bill of lading for those goods to C. to secure a specific advance of 5,000 Rupees made to him upon the bill of lading by C. B. becomes insolvent, being indebted to C. to the amount of 9,000 Rupees. A. is entitled to stop the goods on payment or tender to C. of 5,000 Rupees.

(b.) A. sells and consigns goods to B. of the value of 12,000 Rupees. B. assigns the bill of lading for those goods to C. to secure the sum of 5,000 Rupees due from him to C. upon a general balance of account. B. becomes insolvent. A. is entitled to stop the goods in transit for the whole sum due to him.

95. Stoppage in transit may be effected by the seller either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

96. The notice may be given either to the person who has the immediate possession of the goods, or to the principal whose servant has the possession. In the latter case, it must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

97. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A. sells to B. 100 bales of cotton; 60 bales having come into B.'s possession, and 40 being still in transit, B. becomes insolvent, and A. being still unpaid, stops the 40 bales in transit. A. is entitled to hold the 40 bales until the price of the 100 bales is paid.

Re-sale.

98. Where the buyer fails to perform his part of the agreement either by not taking the goods sold to him or by not paying for them, the seller may re-sell them within a reasonable time after giving notice to the buyer of his intention to do so; and the buyer must bear any loss, but is not entitled to any profit which may occur on the re-sale.

Warranty of Title.

99. If the buyer, or any person claiming under him, is by reason of the invalidity of the seller's title deprived of the thing sold, the seller is responsible to the buyer for loss thereby caused, unless a contrary intention appears by the agreement.

Seller's responsibility for badness of title.

100. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Implied warranty of goodness or quality.

Warranty of soundness on sale of provisions.

101. On the sale of provisions there is an implied warranty that they are sound.

102. On the sale of goods by sample there is an implied warranty that the bulk is equal in quality to the sample.

Warranty on sale of goods by sample.

103. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample or after inspection of the bulk.

Warranty on sale of goods sold as being of a certain denomination.

Illustrations.

(a.) A., at Calcutta, sells to B. 12 bags of "waste silk," then on its way from Moorshedabad to Calcutta. There is an implied warranty by A. that the silk shall be such as is known in the market under the denomination of "waste silk."

(b.) A. sells parcels of "linseed oil" by sample to B. There is an implied warranty by A. that the article sold is such as is known in the market as "linseed oil;" and if he delivers an article which, though equal to sample, is not such as is known in the market as linseed oil, there is a breach of the implied warranty.

(c.) A. sells to B. 40 casks of "oxalic acid," B. having before the sale seen the bulk of the acid, and inspected samples of it. The acid proves to be so adulterated as not to be the article known in commerce as "oxalic acid." There is here a breach of an implied warranty.

(d.) A., in London, where inland bills of exchange do, and foreign bills of exchange do not by law require a stamp, sells to B. a bill of exchange unstamped and purporting to be a foreign bill. There is an implied warranty by A. that the bill is a foreign bill, and if it turns out that the bill is not a foreign but an inland bill, there is a breach of that implied warranty.

104. Where goods have been ordered for a specified purpose, for which goods of the denomination employed in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Warranty where goods ordered for a specified purpose.

Illustration.

B. orders of A., a copper manufacturer, copper for sheathing a vessel. A. on this order supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

105. Upon the sale of an article of a well-known ascertained kind there is no implied warranty of its fitness for any particular purpose.

Sale of article of a well-known ascertained kind.

Illustration.

B. writes to A., the owner of a patent invention for cleaning cotton, "Send me your patent cotton-cleaning machine to clean the cotton at my factory." A. sends the machine according to order. There is an implied warranty by A. that it is the article known as A.'s patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B.'s factory.

106. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold, is not responsible for a latent defect in it.

Non-responsibility for latent defects.

Illustration.

A., in good faith, sells and delivers to B. scrip certificates of shares in a certain railway company. Afterwards the

scrip is repudiated on the ground that it had been issued without authority. A. is not responsible for loss sustained by B. in consequence.

107. Where a specific article has been sold with a warranty and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Buyer's right on breach of warranty.

Illustration.

A. sells to B. a horse, warranted sound. The horse proves to have been unsound at the time of sale. B. is entitled to compensation from A. for loss caused by the unsoundness.

108. Where there has been an agreement for the sale of goods with a warranty, and the warranty is broken, the buyer may reject the goods on their being tendered to him, or may return them after the lapse of not more than a reasonable time for ascertaining the breach of warranty: Provided that beyond keeping them such time and examining or trying them he does not exercise any act of ownership over them; or he may retain them: And whichever course he follows, he is entitled to compensation from the seller for loss caused by the breach of warranty.

Rejection or return of goods sold with warranty.

Illustrations.

(a.) A. agrees to sell to B. 200 bales of cotton by sample. Cotton not in accordance with sample is delivered to B. He may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B. agrees to buy of A. 25 sacks of flour by sample. The flour is delivered to B. who pays the price. B. upon examination, finds it not equal to sample, and complains of this to A. B. afterwards uses two sacks, and sells one. He cannot now repudiate the contract and recover the price, but he is entitled to compensation from A. for any loss caused by the breach of warranty.

Refusal to accept.

109. When the seller sends goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Refusal to accept when goods not ordered are sent.

Illustration.

A. orders of B. specific articles of china. B. sends these articles to A. in a hamper with other articles of china, which had not been ordered. A. may refuse to accept any of the goods sent.

110. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Effect of wrongful refusal to accept.

Rescission in default of payment.

111. The seller of goods is not entitled to rescind the agreement on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the agreement that he should be so entitled.

Rescission on failure to pay price at time fixed.

Auction.

112. If at a sale by auction the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Puffers at auction.

PART V.

OF INDEMNITY AND GUARANTEE.

113. A person can bind himself to save another person from eventual loss.

Indemnity defined.

The security thus afforded is called indemnity when the loss guarded against is that which may be consequent upon the conduct of some person.

Illustrations.

(a.) A. gives B. a letter of indemnity against the consequences of any proceedings which C. may take against B. in respect of a certain sum of 200 Rupees. Here A. binds himself by an express engagement to save B. from consequent loss if C. shall act as contemplated.

(b.) B. accepts a bill of exchange, at A.'s request, for the accommodation of A. A. does not provide for the bill at maturity, and B. is compelled to pay it. A. is liable to B. for the amount of the bill. Here A. binds himself by an implied engagement to indemnify B. against loss consequent on a failure on A.'s part to provide for payment of the bill when due.

114. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

Agent's indemnity against consequences of lawful acts.

Illustrations.

(a.) B., a stockbroker at London, and member of the Stock Exchange, at the request of A., buys for him 20 shares in a bank, "to be paid for on settlement day." Before the settlement day arrives, the bank stops payment, and A. repudiates the transaction, and tells B. not to pay the price. By the rules of the Stock Exchange, however, B. is compelled to pay the price on the settlement day. A. is liable to B. for the price on an implied agreement to indemnify.

(b.) B., at Singapore, under instructions from A. of Calcutta, contracts with C. to deliver certain goods to him. A. does not send the goods to B., and C. sues B. for breach of contract. B. informs A. of the suit, and A. authorizes him to defend the suit. B. defends the suit, and is compelled to pay damages and costs, and incurs expenses. A. is liable to B. for such damages, costs, and expenses.

(c.) B., a broker at Calcutta, by the orders of A., a merchant there, contracts with C. for the purchase of 10 casks of oil for A. Afterwards A. refuses to receive the oil, and C. sues B. B. informs A., who repudiates the contract altogether. B. defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A. is liable to B. for such damages, costs, and expenses.

115. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent's indemnity against consequences of acts done in good faith.

Illustrations.

(a.) A., a decree-holder and entitled to execution of B.'s goods, requires the nazir to seize certain goods, representing them to be the goods of B. The nazir seizes the goods, and is sued by C., the true owner of the goods. A. is liable to indemnify the nazir for the sum he is compelled to pay to C., in consequence of obeying A.'s directions.

(b.) B., an auctioneer, at request of A., sells goods in the possession of A., but which A. had no right to dispose of. B. does not know this, and hands over the proceeds of the sale to A. Afterwards C., the true owner of the goods, sues B. and recovers the value of the goods and costs. A. is liable to indemnify B. for what he has been compelled to pay to C., and for B.'s own expenses.

(c.) A. employs B. to make a quantity of fire-bricks with a trade-mark, which A. knows, but B. does not, to be the trade mark of C. B. makes and marks the bricks as ordered. C. obtains an injunction against B. A. is liable to pay B. the amount of his expenses.

116. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Non-liability of employer of agent to do a criminal act.

Illustrations.

(a.) A. employs B. to beat C., and agrees to indemnify him against all consequences of the act. B. thereupon beats C., and has to pay damages to C. for so doing. A. is not liable to indemnify B. for those damages.

(b.) B., the proprietor of a newspaper, publishes, at A.'s request, a libel upon C. in the paper, and A. agrees to indemnify B. against the consequences of the publication, and all costs and damages of any action in respect thereof. B. is sued by C. and has to pay damages, and also incurs expenses. A. is not liable to B. upon the indemnity.

117. Where a person holds an indemnity and a suit is brought against him in respect of matters comprised in the indemnity, it is his duty to give notice to the person who is bound to indemnify him; and if that person does not authorize him to defend the suit, he is at liberty to compromise it. Whether he defends the suit under such authority as aforesaid, or in the absence of such authority compromises it, he is entitled to receive from the person bound to indemnify him, the damages and costs which he has been compelled to pay.

Rights and liabilities of indemnity-holder when sued.

If he defends the suit without such authority, he is entitled to receive from the person bound to indemnify him the amount he has been compelled to pay, exclusive of any expenses caused by his having defended the suit; unless in defending it he has acted as a prudent man holding no indemnity would have acted in his own case.

Illustrations.

(a.) B., at the request of A., accepts a bill of exchange for the accommodation of A. C., the holder of the bill, sues B. upon it. B. has clearly no defence, but, without the authority of A., he defends the suit, and has to pay costs as well as the amount of the bill. B. can only recover from A. the amount of the bill, upon A.'s implied promise to indemnify.

(b.) C., who holds a lease from W. of certain houses, assigns the lease to B., who agrees to indemnify and save harmless C. from all damages and expenses in respect of the breach of any of the covenants therein. B. re-assigns the lease to A., who gives a like indemnity to B. A. commits a breach of a covenant to repair. W. sues C. and recovers 2,000 Rupees, and C. has to pay, in addition, 500 Rupees as costs and expenses. C. sues B., who defends the suit unsuccessfully, and has to pay to C. the 2,500 Rupees, and also incurs costs and expenses in the defence. A. is only liable to B. for 2,500 Rupees and not for the costs and expenses, as the amount of liability was ascertained by the suit of W. against C., and B. ought to have paid that amount at once to C. on demand.

118. An engagement to fulfil the liability of a third person in case of his default is called a guarantee when founded on sufficient consideration. The person who gives the guarantee is called the surety, the person primarily liable is called the principal debtor, and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

119. Anything which is done or agreed to be done for the benefit of the principal debtor, and which is an inducement to the surety to give the guarantee, may be a sufficient consideration.

Consideration for guarantee.

Illustrations.

(a.) B. requests A. to sell and deliver to him goods on credit. A. agrees to do so, provided C. will guarantee the payment of the price of the goods. C. agrees to guarantee the payment of the goods to be supplied. This is a good guarantee.

(b.) A. sells and delivers goods to B. C. afterwards requests A. to forbear to sue B. for the debt for a year, and promises that if he does so, C. will pay for them in default of payment by B. A. agrees to forbear as requested. There is here a sufficient consideration to sustain C.'s guarantee.

(c.) A. sells and delivers goods to B. C. afterwards promises A. to pay for them in default of B. This is not a guarantee, as there is no consideration to support it.

120. An offer to guarantee does not constitute a guarantee, until it is accepted

When offer constitutes a guarantee.

notified to the offerer.

121. The liability of the surety is co-extensive with that of the principal debtor.

Surety's liability.

Illustration.

A. guarantees to B. the payment of a bill of exchange by C., the acceptor. The bill is dishonoured by C. A. is liable, not only for the amount of the bill, but also for any interest which may have become due on it.

122. A guarantee may extend to a series of transactions, in which case it is called a continuing guarantee.

Continuing guarantee.

Illustrations.

(a.) A., in consideration that B. will employ C. in collecting the rents of B.'s zamindari, promises B. to be responsible to the amount of 5,000 Rupees, for the due collection and payment by C. of those rents. This is a continuing guarantee.

(b.) A. promises B., a tea-dealer, to be responsible to the amount of £100, for any tea he may supply to C. B. supplies C. with tea to the value of £100, and C. pays B. for the same. Afterwards B. supplies C. with tea to the value of £200. C. fails to pay. The guarantee given by A. was a continuing guarantee, and he is accordingly liable to B. to the extent of £100.

(c.) A. agrees with B. to be answerable to him for the price of five sacks of flour to be delivered by B. to C. payable in one month. B. delivers five sacks to C. A. pays for them. Afterwards B. delivers four sacks to C., which C. does not pay for. The guarantee given by A. was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

123. A continuing guarantee may be at any time revoked by the surety as

Revocation of continuing guarantee.

to future transactions, by notice to the creditor.

Illustrations.

(a.) A., in consideration of B.'s discounting, at A.'s request, bills of exchange for C., guarantees to B. for 12 months the due payment of all such bills to the extent of 5,000 Rupees. B. discounts bills for C. to the extent of 2,000 Rupees. Afterwards, at the end of three months, A. revokes the guarantee. This revocation discharges A. from all liability to B. for any subsequent discount. But A. is liable to B. for the 2,000 Rupees, on default of C.

(b.) A. guarantees to B., to the extent of 10,000 Rupees, that C. shall pay all the bills that B. shall draw upon him. B. draws upon C. C. accepts the bill. A. gives notice of revocation. C. dishonours the bill at maturity. A. is liable upon his guarantee.

124. The death of the surety operates as a

Revocation of continuing guarantee by surety's death.

any agreement to the contrary.

revocation of a continuing guarantee, so far as regards future transactions, in the absence of

125. Where, upon the face of the agreement

Liability of two persons primarily liable, not affected by a private arrangement as to suretyship.

two persons are primarily liable to a third person, that liability is not affected so far as regards the third person by an arrangement between the two, that of them shall be liable upon the default of the other, even although arrangement may have been known to the person, unless he was a party to the arrangement.

Illustration.

A. and B. make a joint and several promissory note. A. makes it, in fact, as surety for B., and C. knows it the time when the note is made. In a suit by C. again upon the note, the fact that A. made it as surety for B. that C. knew it, is no answer to the suit.

126. Any variance made without the consent, in the terms of

Discharge of surety by variance in terms of agreement.

original agreement, discharges the surety as to future transactions.

Illustrations.

(a.) A. becomes surety to C. for B.'s conduct as a manager in C.'s bank. Afterwards, B. and C. agree, without consent, that B.'s salary shall be raised, and that he become liable to one-fourth of the losses on discounts allowed a customer to overdraw, and the bank loses a sum of money. A. is discharged from his suretyship by the variance made without his consent, and is not liable to C. for good this loss.

(b.) A. guarantees C. against the misconduct of B., an officer to which he is appointed by C., and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B. misconducts himself. A. is discharged from his liability under his guarantee by the change, though the conduct of B. is in respect of a duty not affected by the Act.

(c.) C. agrees to appoint B. as his clerk to sell coals, and to pay him a yearly salary of £100, upon A.'s becoming surety to C. B.'s duty accounting for monies received by him as clerk. Afterwards, without A.'s knowledge or consent, and B. agree that B. should be paid by a commission of 10 per cent on the coal sold by him instead of by the salary. A. is not liable for subsequent misconduct of B.

(d.) A. gives to C. a continuing guarantee to the extent of 3,000 Rupees for any oil supplied by C. to B. on account. Afterwards B. becomes embarrassed, and, without knowledge of A., B. and C. agree that C. should continue to supply B. with oil for ready money, and that the payment should be applied to the then existing debts between B. and C. A. is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) A., as surety for B., gives to C. a promissory note for 5,000 Rupees upon an agreement that the 5,000 Rupees should be paid by C. to B. "by draft at three months' date." C., without A.'s knowledge, pays the 5,000 Rupees to B. once instead of giving a draft. A. is discharged from his liability, as the agreement has been varied, and C. might sue for the money before the expiration of three months.

127. The surety is discharged by any agreement

Discharge of surety by release or discharge of principal debtor.

between the creditor and the principal debtor, by which the principal is released, or any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(a.) A. gives a guarantee to C. for goods to be supplied by C. to B. C. supplies goods to B., and afterwards B. becomes embarrassed, and agrees with his creditors (including C.) to assign to them his property in consideration of their releasing him from their demands. Here B. is released from his debt by agreement with C., and A. is discharged from suretyship.

(b.) A. agrees with B. to grow a crop of indigo on A. land, and to deliver it to B. at a fixed rate, and C. guarant-

A's performance of this agreement. B. diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C. is no longer liable on his guarantee.

(c.) A. agrees with B. for a fixed price to build a house for B. within a stipulated time, B. supplying the necessary timber. C. guarantees A's performance of the contract. B. omits to supply the timber. C. is discharged from his suretyship.

128. An agreement between the creditor and

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue principal debtor.

the principal debtor, by which the creditor makes a composition with, or agrees to give time to, or not to sue, the principal debtor, discharges the surety.

Illustrations.

(a.) C., the holder of an overdue bill of exchange drawn by A. as surety for B., and accepted by B., binds himself by a valid agreement with B. to give time to B., A. not assenting to the agreement. A. is discharged from liability on the bill.

(b.) C., to whom B. owes a debt guaranteed by A., binds himself by agreement with B. not to sue B., and to accept four annas in the rupee in respect of B's debts. A. assents to the arrangement. A. is not discharged, and is liable to C. for the whole debt.

129. Where an agreement to give time to the

Agreement to give time to principal debtor made with a third person.

principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C., the holder of an overdue bill of exchange, drawn by A. as surety for B., and accepted by B., binds himself by a valid agreement with M. to give time to B. A. has no knowledge of this agreement. A. is not discharged.

130. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B. owes to C. a debt guaranteed by A. The debt becomes payable. C. does not sue B. for a year after the debt has become payable. A. is not discharged from his suretyship.

131. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free that one from any responsibility to the others.

132. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

(a.) B. agrees to build a ship for C. for a given sum, to be paid by instalments as the work reaches certain stages. A. becomes surety to C. for B's due performance of the agreement. C., without the knowledge of A., prepays to B. the last two instalments. A. is discharged by this payment.

(b.) B. agrees with C. to complete certain fittings in C's warehouse for 8,000 Rupees, C. stipulating to insure, from time to time, the fittings from fire, and to deduct the costs of the insurance from the 8,000 Rupees. A., knowing of this agreement, guarantees B's due performance of the work. C. never insures, and fittings to the value of 7,000 Rupees are destroyed by the fire at B's shop. B. becomes insolvent, and it costs C. 9,000 Rupees to complete the work. A. is discharged by C's omission to insure, not merely to the

extent of the benefit he would have derived from the insurance if it had been effected, but altogether.

(c.) C. lends money to B. on the security of a joint and several promissory note made in C's favour by B. and by A. as surety for B., together with a bill of sale of B's furniture, which gives power to C. to sell the furniture, and apply the proceeds in satisfaction of the monies due on the note. Subsequently C. sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A. is discharged from liability on the note.

(d.) A. puts M. as apprentice to B., and gives a guarantee to B. for M's fidelity. B. covenants on his part that he will, at least once a month, see M. make up the cash. B. omits to see this done as agreed, and M. embezzles. A. is not liable to B. on his guarantee.

133. Where a guaranteed debt has become due,

or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Rights of surety on payment or performance.

134. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time the contract is entered into, whether the surety knows or does not know of the existence of such security; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Surety's right to benefit of creditor's securities.

Illustrations.

(a.) C. advances to B., his tenant, 2,000 Rupees on the guarantee of A. C. has also a further security for the 2,000 Rupees by a mortgage of B's furniture. C. cancels the mortgage. B. becomes insolvent, and C. sues A. on his guarantee. A. is discharged from liability to the amount of the value of the furniture.

(b.) C., a creditor, whose advance to B. is secured by a decree, receives also a guarantee for that advance from A. C. afterwards takes B's goods in execution under the decree and then, without the knowledge of A., withdraws the execution. A. is discharged.

(c.) A., as surety for B., makes a bond jointly with B. to C. to secure a loan from C. to B. After the date of this transaction, C. obtains from B. a further security for the same debt. Subsequently C. gives up the further security. A. is not discharged.

135. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by misrepresentation.

Illustrations.

(a.) B. owes C. £800. C. agrees to advance B. £2,000 on his obtaining a surety for that amount. It is also agreed between B. and C. that the £800 should be deducted from that sum. The agreement, which is in writing, states that C. had agreed to advance B. £2,000, and that the £800 had been repaid. This agreement is read to A. in C's presence, but nothing more is said, when A. gives a promissory note for £2,000 as surety for B. A. is discharged from liability on the note, as there is a false representation to A. that the £800 had been repaid, and that the whole sum of £2,000 was to be advanced to B.

(b.) C. represents to A. that he is liable to D. for 3,000 Rupees, as surety for A. and B. A. thereupon concurs as surety in a mortgage security given by B. in order to indemnify C. C. in fact was not liable to D. as alleged. A. is not bound by the security.

136. Any guarantee which the creditor has obtained by means of the concealment of a material circumstance, is invalid.

Guarantee obtained by concealment.

Illustrations.

(a.) A. engages B. as clerk to collect money for him. B. fails to account for some of his receipts, and A. in consequence calls upon him to furnish security for his duly accounting. C. gives his guarantee for B.'s duly accounting. A. does not acquaint C. with B.'s previous conduct. B. afterwards makes default. The guarantee is invalid.

(b.) A. guarantees to C. payment for iron to be supplied by him to B. to the amount of 2,000 tons. B. and C. have privately agreed that B. should pay five Rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A. is not liable as a surety.

137. Where a person gives a guarantee upon an agreement that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Guarantee on agreement that creditor shall not act on it until co-surety joins.

138. In every contract of guarantee there is an implied agreement by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee.

Implied agreement to indemnify surety.

Illustrations.

(a.) B. is indebted to C., and A. is surety for the debt. C. demands payment from A., and on his refusal sues him for the amount. A. defends the suit, at the request of B., having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B. the amount paid by him for costs, as well as the principal debt.

(b.) C. lends B. a sum of money, and A., at the request of B., accepts a bill of exchange drawn by B. upon A. to secure the amount. C., the holder of the bill, demands payment of it from A., and on A.'s refusal to pay sues A. upon the bill. A. defends the suit, and has to pay the amount of the bill and costs. He can recover from B. the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c.) A. guarantees to C., to the extent of 2,000 Rupees, payment of rice to be supplied by C. to B. C. supplies to B. rice to a less amount than 2,000 Rupees, but obtains from A. payment of the sum of 2,000 Rupees in respect of the rice supplied. A. cannot recover from B. more than the price of the rice actually supplied.

139. Where two or more persons or co-sureties for the same debt or duty either jointly or severally, and whether under the same or different agreements, and whether with or without the knowledge of each other, the co-sureties, in the absence of any agreement to the contrary, are liable as between themselves to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Co-sureties liable to contribute equally.

Illustrations.

(a.) A., B. and C. are sureties to D. for the sum of 3,000 Rupees lent to E. E. makes default in payment. A., B. and C. are liable as between themselves to pay 1,000 Rupees each.

(b.) A., B. and C. are sureties to D. for the sum of 1,000 Rupees lent to E., and it is arranged between A., B. C. and E. that A. is to be responsible to the extent of one-quarter B. to the extent of one-quarter, and C. to the extent of one-half. E. makes default in payment. As between the sureties, A. is liable to pay 250 Rupees, B. 250 Rupees, and C. 500 Rupees.

140. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Liability of co-sureties bound in different sums.

Illustrations.

(a.) A., B. and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 Rupees, B. in that of 20,000 Rupees, C. in that of 40,000 Rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 30,000 Rupees. A., B. and C. are each liable to pay 10,000 Rupees.

(b.) A., B. and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 Rupees, B. in that of 20,000 Rupees, C. in that of 40,000 Rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 40,000 Rupees. A. is liable to pay 10,000 Rupees, and B. and C. 15,000 Rupees each.

(c.) A., B. and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 Rupees, B. in that of 20,000 Rupees, C. in that of 40,000 Rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 70,000 Rupees. Each has to pay the full penalty of his bond.

PART VI.

OF BAILMENT.

141. The delivery of goods by one person to another for some purpose, upon an agreement that they shall be delivered by the latter back to or according to the directions of the former when the purpose shall have been accomplished, is called a bailment. The person delivering the goods is called the bailor. The person to whom they are delivered is called the bailee.

'Bailment,' 'bailor,' and 'bailee' defined.

142. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Delivery to bailee how made.

143. The bailor is bound to disclose to the bailee faults in the goods bailed of which the bailor is aware and which materially interfere with the use of them or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Bailor's duty to disclose faults in goods bailed.

Illustration.

A. lends a horse to B. which he knows to be vicious. He does not disclose the fact that the horse is vicious. The horse runs away. B. is thrown and injured. A. is responsible to B. for damage sustained.

144. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Care to be taken by bailee.

145. The bailee, in the absence of any agreement to the contrary, is not responsible for the loss, destruction, or deterioration of the thing bailed if not caused by his fault.

Bailee when not liable for loss, etc., of thing bailed.

146. If the bailee does any act with regard to the goods bailed which is inconsistent with the conditions of the bailment, such act is, at the option of the bailor, a termination of the bailment.

Termination of bailment by bailee's act inconsistent with conditions.

Illustration.

A. lets to B. for hire, a horse for his own riding. B. drives the horse in his carriage. This is at the option of A. a termination of the bailment.

147. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorized use of goods bailed.

Illustrations.

(a.) A. lent a horse to B. for his own riding only. B. allowed C., a member of his family, to ride the horse. C. rode with care, but the horse accidentally fell and was injured. B. is liable to make compensation to A. for the injury done to the horse.

(b.) A. hired a horse in Calcutta from B. to ride to Benares. A. rode with due care, but rode to Cuttack instead. The horse accidentally fell and was injured. A. is liable to make compensation to B. for the injury to the horse.

Mixture of goods bailed.

148. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest in proportion to their respective shares in the mixture thus produced.

Mixture, with bailor's consent, of his goods with goods of bailee.

149. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated, the property in the goods remains in the parties respectively, but the bailee is bound to bear the expense of separation, and any damage arising from the mixture.

Mixture, without bailor's consent, when the goods can be separated.

150. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods so that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Mixture, without bailor's consent, when the goods cannot be separated.

151. Where by the conditions of the bailment the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall re-pay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Re-payment by bailor of necessary expenses.

152. Where the bailment is gratuitous, the bailor is entitled at any time, upon reasonable notice, to the restoration of the goods bailed.

Restoration of goods bailed gratuitously.

153. The bailee must return the goods bailed without demand as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Return of goods bailed on expiration of time, or accomplishment of purpose.

154. If by the fault of the bailee the goods are not delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

Bailee's responsibility when goods are not duly delivered or tendered.

Termination of gratuitous bailment by death.

155. The bailment where gratuitous is terminated by the death either of the bailor or of the bailee.

156. In the absence of any agreement to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Increase or profit from goods bailed.

Illustration.

A. leaves a cow in the custody of B., who takes care of it gratuitously. The cow has a calf. B. is bound to deliver the calf as well as the cow to A.

157. The bailor is responsible to the bailee for any loss which he may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailor's responsibility to bailee.

158. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailment by several joint owners.

159. If the bailor has no title to the goods, and the bailee delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Re-delivery to bailee who has no title.

160. If a third person claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of third person claiming goods bailed.

161. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner, but he has a right to retain the goods against the owner until he receives such compensation; and where the owner offers a specific reward for the return of goods lost, the finder has a right to retain them until he receives the reward.

Right of finder of goods.

162. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill on the goods bailed, he has, in the absence of any agreement to the contrary, a right to retain the goods until he receives remuneration for the services he has rendered in respect of them.

Bailee's particular lien.

Illustrations.

(a.) A. delivers a rough diamond to B., a jeweller, to be cut and polished, which is accordingly done. B. is entitled to retain the stone till he is paid for the services he has rendered.

(b.) A. gave some cloth to B., a tailor, to make into a coat. A. agreed with B. that the coat should be delivered as soon as it was finished, and that three months' credit should be given for the price. B. is not entitled to retain the coat until he is paid.

163. In the absence of any agreement to the contrary, bankers, factors, and wharfingers have no right to retain any goods bailed to them as a security for a general balance of account.

Bankers, factors, and wharfingers have no general lien.

Pledge.

164. The bailment of goods as security for payment of a debt or performance of an engagement is called pledge. The bailor is in this case called the pawnor.

'Pledge,' 'pawnor,' and 'pawnee' do. stand.

The bailee is called the pawnee.

165. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of engagement, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession, or for the preservation of the goods pledged.

Pawnee's right of retainer.

166. The pawnee shall not retain the goods pledged for any other debt or engagement than the debt or engagement for which they are delivered, except by agreement between the parties; but such agreement, in the absence of anything to the contrary, will be presumed in regard to subsequent advances made by the pawnee.

In case of subsequent advances.

167. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Extraordinary expenses incurred by pawnee.

168. If the pawnor makes default in payment of the debt or performance of the engagement at the stipulated time, the pawnee may bring a suit against the pawnor upon the debt or engagement, and retain the goods pledged as a collateral security, or may sell the thing pledged on giving the pawnor reasonable notice of the sale. If the proceeds of the sale are less than the amount due in respect of the debt or engagement, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Pawnee's right where pawnor makes default.

169. If a time is stipulated for the payment of the debt or performance of the engagement for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the engagement at the stipulated time, he may redeem the goods pledged at any time before the actual sale of them.

Defaulting pawnor's right to redeem.

170. A person who is in possession of goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents: Provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly.

Pledge by possessor of documentary title to goods.

Pledge where pledgor has only a limited interest.

171. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits against wrong-doers.

172. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as

Suits by bailor or bailee against wrong-doers.

the owner might use in the like case if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

173. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Apportionment of proceeds of such suits.

PART VII.

OF AGENCY.

174. An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom the act is done, or who is so represented, is called the principal.

'Agent' and 'principal' defined.

175. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be a principal.

176. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Who may be an agent.

Agency created without consideration.

177. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

178. The authority of an agent may be expressed or implied.

179. An authority is said to be expressed when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing may be accounted circumstances of the case.

Definitions of expressed and implied authority.

Illustration.

A. owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B., and he is in the habit of ordering goods from C. in the name of A. for the purposes of the shop, and of paying for them out of A.'s funds with A.'s knowledge. B. has an implied authority from A. to order goods from C. in the name of A. for the purposes of the shop.

180. An agent having an authority to do any act, has authority to do every lawful thing which is necessary in order to do such act; and an agent having an authority to carry on any business, has authority to do every lawful thing necessary for the purpose of or usually done in the course of conducting such business.

Extent of agent's authority.

Illustrations.

(a.) A. is employed by B., residing in London, to recover at Bombay a debt due to B. A. may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b.) A. constitutes B. his agent to carry on his business of a ship-builder. B. may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

181. An agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.

Agent's authority in an emergency.

Illustrations.

(a.) A ship is driven on shore. The master has authority to hire men and boats to get her off, and to incur all necessary expenses for re-fitting her.

(b.) A. consigns provisions to B. at Calcutta, with directions to send them immediately to C. at Cuttack. B. may sell the provisions at Calcutta if they will not bear the journey without spoiling.

182. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal person.

Enforcement and consequences of agent's contracts.

Illustrations.

(a.) A. buys goods from B., knowing that he is an agent for their sale, but not knowing who is the principal. B.'s principal is the person entitled to claim from A. the price of the goods, and A. cannot set off against that claim a debt due to himself from B.

(b.) A. being B.'s agent with authority to receive money on his behalf, receives from C. a sum of money due to B. C. is discharged of his obligation to pay the sum in question to B.

183. Where an agent does more than he is authorized to do, what he does within the scope of his authority, if it can be separated from what is beyond that scope, is binding as between the principal and the agent; the rest not.

Principal how far bound when agent exceeds authority.

Illustration.

A., being owner of a ship and cargo, authorizes B. to procure an insurance for 4,000 Rupees on the ship. B. procures a policy for 4,000 Rupees on the ship, and another for the like sum on the cargo. A. is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

184. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the whole is void as against the principal.

When excess of agent's authority is not separable.

Illustration.

A. authorizes B. to buy 500 sheep for him. B. buys 500 sheep and 200 lambs for one sum of 6,000 Rupees. The whole transaction is void as against A.

185. A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency.

Sub-agent defined.

186. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally.

When agent cannot delegate.

187. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed

Representation of principal by sub-agent properly appointed.

by the principal.

Agent's responsibility for sub-agent. Sub-agent's responsibility.

except in cases of fraud or wilful wrong.

188. Where an agent has appointed a person to act as a sub-agent without having authority to do so, the agent stands towards that person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, and the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

189. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly; such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation to principal of person named by agent authorized to name another to act for principal.

Illustrations.

(a.) A. directs B., his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B. names C., an auctioneer, to conduct the sale. C. is not a sub-agent, but is A.'s agent for the conduct of the sale.

(b.) A., a merchant in Calcutta, consigns goods to B., a merchant in London, and directs him to sell the goods. B. appoints C., a broker, to sell the goods for A. C. is not a sub-agent, but is agent for A.

(c.) A. appoints B., a merchant in Calcutta, his attorney, for the purpose of recovering the monies due to A. from C. & Co. B. instructs D., a solicitor, to take legal proceedings against C. & Co. for the recovery of the money. D. is not a sub-agent, but is solicitor for A.

190. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, and if he does this he will not be responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty in naming such person.

Illustrations.

(a.) A. directs B. to buy and ship a cargo of indigo for him, and to have the cargo properly insured. B. employs an insurance broker of good reputation, who effects an insurance on the cargo. The ship, having the cargo on board, is lost; but owing to the omission of some usual stipulations in the policy of assurance, the underwriters refuse to pay the sum insured. B. is not responsible to A. for the loss, but the insurance broker is.

(b.) B., the agent of A., employs an auctioneer in good credit to sell goods of A., and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B. is not responsible to A. for the proceeds.

191. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind. When the agent adopts a different course, if any loss be sustained, he must make it good to his principal, and if any profit accrues he must account for it.

Agent's duty in conducting principal's business.

Illustrations.

(a.) A., an agent engaged in carrying on for B. a business in which it is the custom to invest from time to time at interest the monies which may be in hand, omits to make such

investment. A. must make good to the principal the interest usually obtained by such investments.

(b.) B., a broker, in whose business it is not the custom to sell on credit, sells goods of A. on credit to C., whose credit at the time was very high. C., before payment, becomes insolvent. B. must make good the loss to A.

192. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(a.) A., a merchant in Calcutta, has an agent B. in London, to whom a large sum of money is paid on A.'s account. B. improperly retains the money for a considerable time. A., in consequence of not receiving the money, becomes insolvent. B. is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, but not further.

(b.) A., an agent for the sale of goods, having authority to sell on credit, sells to B., on credit, without making the proper and usual inquiries as to the solvency of B. B., at the time of such sale, is insolvent. A. must make compensation to his principal in respect of any loss thereby sustained.

(c.) A., an insurance broker employed by B. to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A. is bound to make good the loss to B.

(d.) A., a merchant in England, directs B., his agent at Bombay, to send him 100 bales of cotton by a certain ship. B., having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B. is bound to make good to A. the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

193. An agent is bound to render proper accounts to his principal on demand.

Agent's accounts.

194. It is the duty of an agent in cases of difficulty to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Agent's duty to communicate with principal.

195. If a person who is an agent deals on his own account in the business of the agency without first obtaining the consent of the principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal is at liberty, on discovering such circumstances, either to adopt or to repudiate the transaction.

Agent dealing on his own account in business of agency without principal's consent.

Illustrations.

(a.) A. directs B. to sell A.'s estate. B. buys the estate himself in the name of C. A., on discovering that B. bought the estate for himself, may either repudiate or adopt the sale at his option.

(b.) A. directs B. to sell A.'s estate. B. on looking at the estate before selling it, finds a mine on the estate which is known to A. B. informs A. that he wishes to buy the estate for himself, but conceals the discovery of the mine. A. allows B. to buy, in ignorance of the existence of the

mine. A., on discovering that B. knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

196. An agent dealing on his own account with his principal in the business of the agency is not entitled to any remuneration as agent, notwithstanding that the principal adopts the transaction.

Agent dealing on his own account with principal in business of agency, not entitled to remuneration.

Illustration.

A. agrees that if B. will find a purchaser for his land in Bombay at 2 Rupees a yard, A. will give B. 5 per cent. commission. B. afterwards buys on his own account, and A. adopts the contract. B. is not entitled to any commission.

197. If an agent without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

Illustration.

A. directs B. to buy a certain house for him. B. tells A. it cannot be bought, and buys the house for himself. A. may, on discovering that B. has bought the house, compel him to sell it to A. at the price he gave for it.

198. An agent may retain, out of any sums received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right to retain out of sums received on principal's account.

199. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

200. In the absence of any agreement to the contrary, remuneration in respect of the performance of any act is not due to the agent until the completion of such act.

When agent's remuneration becomes due.

201. An agent who is guilty of gross misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which has been so misconducted.

Misconduct disentitles agent to remuneration.

Illustrations.

(a.) A. employs B. to recover 1,00,000 Rupees from C. and lay it out on good security. B. recovers the 1,00,000 Rupees and lays out 90,000 Rupees on good security, but lays out 10,000 Rupees on insufficient security, whereby A. loses 2,000 Rupees. B. is entitled to remuneration for recovering the 1,00,000 Rupees and for investing the 90,000 Rupees. He is not entitled to any remuneration for investing the 10,000 Rupees, and he must make good the 2,000 Rupees to A.

(b.) A. employs B. to recover 1,000 Rupees from C. Through B.'s misconduct the money is not received. B. is entitled to no remuneration for his services, and must make good the loss.

202. In the absence of any agreement to the contrary, an agent is entitled to retain goods, papers, and other property of the principal received by him, until the

Agent's lien on principal's goods and papers.

amount due to himself for commission, disbursements, and services in respect of the same has been paid or accounted for to him.

Ratification.

203. Where acts are done by one person on behalf of another, but without his knowledge, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

204. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied.

Illustration.

A, without authority buys goods for B. Afterwards B sells them to C, on his own account. B's conduct implies a ratification of the purchase made for him by A.

Knowledge requisite to valid ratification.

205. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

206. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

207. An act done without authority, which, if done with authority, would have the effect of subjecting a third person to damages or of terminating any right or interest of a third person, cannot by ratification be made to have such effect.

Ratification of unauthorized act cannot injure third person.

Illustrations.

(a.) A, an unauthorized person, requires on account of B, the owner of a chattel, the delivery of the chattel to B. This demand cannot be ratified by B, so as to make the holder liable for damages for default.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified so as to be binding on A.

208. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent.

Illustrations.

(a.) A is employed by B, to buy certain goods from C, and buys them accordingly. In the course of the treaty for the sale A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C, against the price of the goods.

(b.) A is employed by B, to buy goods from C. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce nor be bound by contracts on behalf of principal.

Implication of agreement to contrary.

209. In the absence of any agreement to the contrary, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Explanation.—Such an agreement may be implied in the following cases:—

- (1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad.
- (2.) Where the agent does not disclose the name of his principal.
- (3.) Where the principal, though disclosed, cannot be sued.

210. Where one man enters into an engagement by contract with another, having no knowledge or reasonable ground of suspicion that the other is an agent, the principal, if he requires the performance of the engagement, can only obtain it, subject to the rights and obligations subsisting between the agent and the other party to the contract.

Performance of contract with agent supposed to be principal.

Illustration.

A, who owes 500 Rupees to B, sells 1,000 Rupees' worth of rice to B. A is acting as agent for C, in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B, to take the rice without allowing him to set off A's debt.

211. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Principal's liability where agent personally liable.

Illustration.

A enters into a contract with B, to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B, or C, or both, for the price of the cotton.

212. A person who enters into a contract with an agent, if he afterwards induces the agent to do any act in the belief that the principal will be held exclusively liable on the contract, cannot hold the agent liable; and in like manner if he induces the principal to do any act in the belief that the agent will be held exclusively liable, he cannot hold the principal liable.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

Illustration.

A, in Bombay, agrees as agent for B, a merchant in London, to buy 100 bales of cotton from C. C intimates to B that he intends to hold A, exclusively liable for the price of the cotton, and B, relying upon this intimation settles his account with A, giving A credit for the price of the cotton. A afterwards becomes bankrupt without having paid the price of the cotton to C. C cannot hold B liable for the price of the cotton.

213. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his supposed employer does not ratify his acts, to make compensation to the other, according to the rules laid down in the chapter on contracts, section 50, in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

214. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if he was in reality acting not as agent but on his own account.

Person falsely contracting as agent, not entitled to performance.

215. When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he had by his words or conduct induced such persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(a.) A consigns goods to B. for sale, and gives him verbal instructions not to sell under a fixed price. C. being ignorant of B's instructions enters into an agreement with B. to buy the goods at price lower than the reserved price. A. is bound by the agreement.

(b.) A. knows that B. is an agent of C., and acting under written instructions from C., but makes an agreement with B. as C.'s agent without asking to see the instructions. The terms of the agreement are contrary to the instructions. C. is not bound by the agreement.

Ship-master's authority to sign bill of lading.

216. The master of a ship has not, as such, any authority to sign bills of lading without receiving the goods to which they refer.

217. A master is bound to make compensation to third persons for injuries caused by the negligence or unskillfulness of his servant acting as such, but not for his wilful misconduct.

Master's liability for injuries caused by his servant.

Illustrations.

(a.) A's coachman, driving A's carriage on A's business, strikes B's horses, not wantonly, but in order to extricate himself from a difficulty, and causes the horses to run away, in consequence of which B's carriage is overturned and broken. A. is liable to make compensation to B. in respect of the loss or damage caused to him by the breaking of the carriage.

(b.) A's coachman, driving A's coach on A's business, wantonly strikes B's horses, which run away, in consequence of which B's carriage is overturned and broken. A. is not, but his coachman is, liable to make compensation to B. in respect of the loss or damage caused to him by the breaking of the carriage.

(c.) The commander of A's ship, navigating the ship on A's business, through negligence runs over B's boat. A. is liable to make compensation to B. in respect of loss or damage caused to him thereby.

(d.) The commander of A's ship, navigating the ship on A's business, intentionally runs over B's boat. A. is not, but the commander is, liable to make compensation to B. in respect of loss or damage caused to him thereby.

(e.) A's coachman driving A's coach, but not on A's business, through negligence runs over B., who thereby sustains severe bodily injury. A. is not, but the coachman is, liable to make compensation to B. in respect of such injury.

(f.) A. employs B. to act as conductor of his omnibus. C. enters the omnibus, and having behaved improperly there, is removed by B. with unnecessary violence. In consequence of B's violence C. is seriously injured. A. is not, but B. is, liable to make compensation to C. in respect of the effects of such injury.

(g.) A. was in the habit of buying corn and directing the vendor to deliver it at B's wharf, and of paying for the corn on the production of the receipt of B. or his servant. B's servant, whose duty it was to receive the corn, and give receipts for it on behalf of B., gave C. a receipt for corn that had never been delivered, and thus enabled C. to obtain money from A. B. is not liable to make compensation to A. in respect of the loss caused to him by the conduct of B's servant.

218. A person who employs another to do a lawful act, otherwise than as a servant, is not responsible for injuries caused to third persons in the doing of that act by the negligence or unskillfulness of

Employer's responsibility for injuries caused to third person in doing lawful act.

the person employed, except in any case where the injuries may have been caused by conduct which the employer had authorized or adopted.

Illustrations.

(a.) A. employs B., a builder, to pull down and rebuild A's house. In consequence of the negligence of B's workmen in pulling down the house, the front of C's house, which adjoins A's, falls down. A. is not liable to make good the loss to C., but B. is.

(b.) A. employs B., a builder, to execute certain alterations in a house, including the preparation and fixing of gas fittings. B. makes a sub-contract with C., a gas-fitter, to execute this part of the work. D. is injured by an explosion of gas, caused by C's negligence. C. is, but A. and B. are not, liable to make compensation to D. in respect of such injury.

219. A person who is bound to do any act is responsible for all injuries arising from the non-performance of such act, although he may have employed another to do it.

Responsibility for injuries arising from non-performance of act which a person is bound to do.

Illustrations.

(a.) A. is bound to repair the wall of his house, which is in a dangerous state. He employs B. to repair it. B. omits to do so. The wall falls down; and in doing so draws with it a part of an adjoining house belonging to C. A. is liable to make good the loss to C.

(b.) A. is bound to cover in a drain in front of his house, and employs B. to do so. B. neglects to cover in the drain; in consequence of B's negligence C. falls into the drain, and is hurt. A. must make compensation to C.

220. A person employing another to do any act is bound to make compensation to third persons in respect of injuries caused directly by such act.

Compensation for injuries caused by act of person employed to do the act.

Master's liability for injury to one servant by misconduct, &c., of another.

Exception.—Where two persons are engaged as agents or servants to the same master for a common object, the master is not bound to make compensation to one servant in respect of loss or damage arising from the misconduct, negligence, or want of skill of the other, unless he neglected to use ordinary care in the selection of the servant who has caused the injuries.

Illustrations.

(a.) A. employs B. to build a house according to a particular plan. The house cannot be built without obscuring the lights of a neighbour's house. The house is built accordingly. A. is liable to make good the loss or damage thereby sustained by the neighbour.

(b.) The guard of a train is injured through the neglect of the plate-layers to keep the line in proper order. Ordinary care had been used in the selection of the plate-layers. The Railway Company is not liable to indemnify the guard.

221. The master must make compensation to his agent or servant in respect of injury caused to such agent or servant by the master's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

Illustrations.

A. employs B. as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B. is in consequence hurt. A. must make compensation to B.

222. The principal cannot retain any profit resulting from the fraud of his agent, although such fraud have been unauthorized by or unknown to the principal.

Profit resulting from agent's fraud.

223. An agent is not responsible to third persons for injuries to them arising from his neglect of duty, but he is bound to make compensation to his employer in respect of all sums properly paid by him on account of such injuries.

Agent's responsibility for injuries arising from neglect.

Illustration.

A. is bound to cover in a drain in front of his house, and employs B. to do so. B. neglects to cover in the drain; in consequence of B.'s negligence, C. falls into the drain, and is hurt. B. is not liable to make compensation to C.; but B. must make compensation to A. in respect of any compensation which A. has been compelled to make to C.

224. An agent is in all cases responsible to third persons for wrongful acts done by him, though such acts may have been previously commanded or subsequently ratified by his employer.

Agent's responsibility for wrongful acts.

225. An agency is terminated by the principal revoking his authority or by the agent renouncing the business of the agency, or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an Insolvent under the provisions of any Act for the time being in force for the relief of Insolvent debtors.

226. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot be terminated to the prejudice of such interest.

Where agency is coupled with an interest.

Illustrations.

(a.) A. gives authority to B. to sell A.'s land, and to pay himself out of the proceeds the debts due to him from A. A. cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A. consigns 1,000 bales of cotton to B., who has made advances to him on such cotton, and desires B. to sell the cotton, and to repay out of the price the amount of his own advances. A. cannot revoke this authority, nor is it terminated by his insanity or death.

227. The principal may (save as is otherwise provided by the last preceding section) revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation of agent's authority.

228. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

Illustrations.

(a.) A. authorizes B. to buy 1,000 bales of cotton on account of A., and to pay for it out of A.'s monies remaining in his hands. B. buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A. cannot revoke his authority so far as regards payment for the cotton.

(b.) A. authorizes B. to buy 1,000 bales of cotton on account of A., and to pay for it out of A.'s monies remaining in B.'s hands. B. buys 1,000 bales of cotton in A.'s name, and so as not to render himself personally liable for the price. A. can revoke B.'s authority to pay for the cotton.

229. If it has been agreed expressly or by implication that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation or renunciation.

230. Reasonable notice must be given of such revocation or renunciation, or the damage thereby resulting to the principal or the agent, as the case may be, must be made good to him by the other.

Notice of revocation or renunciation.

231. Revocation and renunciation may be expressed, or may be implied in the conduct of the principal or agent respectively.

Revocation and renunciation may be expressed or implied.

Illustration.

A. empowers B. to let A.'s house. Afterwards A. lets it himself. This is an implied revocation of B.'s authority.

232. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons before it becomes known to them.

When termination of agent's authority takes effect.

Illustrations.

(a.) A. directs B. to sell goods for him, and agrees to give B. 2 per cent. commission on the price fetched by the goods. A. afterwards by letter revokes his authority. B., after the letter is sent, but before he receives it, sells the goods for 100 Rupees. The sale is binding on A., and B. is entitled to two Rupees as his commission.

(b.) A., at Madras, by letter directs B. to sell some cotton lying in a warehouse in Bombay for him, and afterwards by letter revokes his authority to sell, and directs B. to send the cotton to Madras. B. after receiving the second letter enters into a contract with C., who knows of the first letter, but not of the second, for the sale to him of the cotton. C. pays B. the money, with which B. absconds. The contract is binding on A.

233. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take all reasonable steps for the protection and preservation of the interest entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

Illustrations.

(a.) A., in London, consigns to his agent B., at Calcutta, for sale, a cargo of porcelain. A. dies. B.'s duty, under ordinary circumstances, is to warehouse and retain the porcelain.

(b.) A., in New York, consigns to B., in Calcutta, for sale, a cargo of ice. A. dies. It is B.'s duty to sell the ice as soon as possible.

234. The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him, subject to the rules herein contained regarding the termination of an agent's authority.

Termination of sub-agent's authority.

PART VIII.

OF PARTNERSHIP.

235. Partnership is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

'Partnership' defined.

Persons who have entered into partnership with one another are called collectively a firm.

Illustrations.

(a.) A. and B. buy 100 bales of cotton, which they agree to sell for their joint profit; A. and B. are partners in respect of such cotton.

(b.) A. and B. buy 100 bales of cotton, agreeing to share it between them. A. and B. are not partners.

(c.) A. agrees with B., a goldsmith, to buy and furnish gold to B., to be worked up by him and sold, and that they shall share in the profits. A. and B. are partners.

(d.) A. and B. agree to work together as carpenters, but that A. shall receive all profits, and shall pay wages to B. A. and B. are not partners.

(e.) A. and B. are joint owners of a ship. This circumstance does not make them partners.

236. A loan to a person engaged or about to engage in any trade or undertaking upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner or render him responsible as such.

237. In the absence of any agreement to the contrary, property left by a retiring partner or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section.

238. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein nor give him the rights of a partner.

239. No person being a widow or child of a deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

240. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the good will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

241. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm is responsible to him as a partner in such firm.

242. Any one permitting himself to be represented as a partner is liable as such to third persons who, on the faith thereof, give credit to the partnership.

243. A person who is under the age of majority, according to the laws to which he is subject, may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

244. A person who has been admitted to the benefits of partnership under the age of majority, becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

245. Every partner is liable for all debts and obligations incurred by or on behalf of the partnership.

246. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

247. Each partner who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A. and B. trade in partnership—A. residing in England and B. in India. A. draws a bill of exchange in the name of the firm. B. has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the fraud.

(b.) A., being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A. and B. carry on business in partnership as bankers: a sum of money is received by A. on behalf of the firm. A. does not inform B. of such payment, and afterwards A. appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A., a partner, takes upon him to agree that his firm shall submit to an arbitration. His undertaking is void.

(e.) A. and B. are partners. A. with the intention of cheating B., goes to a shop and purchases articles such as might be used in the partnership business, which he converts to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

248. Where partners have by agreement regulated and defined as between themselves their rights and obligations; such agreement can be annulled or altered only by consent of all of them.

which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A., B. and C. intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A. receiving one-half of the net profits, and the other half being divided equally between B. and C. without any remonstrance on their part. This course of dealing supercedes the provision in the articles as to the division of profits.

249. In the absence of any agreement to the contrary, the relations of the partners to each other are determined by the following rules:—

General rule determining partner's mutual relations.

- (1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.
- (2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership.
- (3.) Each partner has a right to take part in the management of the partnership business.
- (4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business.
- (5.) All ordinary matters of partnership business may be done with the consent of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners.
- (6.) No person can introduce a new partner into a firm without the consent of all the partners.
- (7.) If from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members.
- (8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time.
- (9.) Where a partnership has been entered into for a fixed term, no partner can during such term retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever.
- (10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

250. At the suit of a partner the court may dissolve the partnership in the following cases:—

When Court may dissolve partnership.

- (1.) When a partner becomes of unsound mind.

(2.) When a partner other than the person suing has been adjudicated an insolvent under any law relating to insolvent debtors.

(3.) When a partner other than the person suing has done any act by which the whole interest of such partner is legally transferred to a third person.

(4.) When any partner becomes incapable of performing his part of the partnership contract.

(5.) When a partner other than the person suing is guilty of gross misconduct in the affairs of the partnership or towards his partners.

(6.) When the business can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

251. A partnership is in all cases dissolved by its business being prohibited by law.

Application of original terms to partnership continued under them.

252. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

253. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Benefit derived from transaction affecting partnership.

254. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(a.) A. and B. are partners for the sale of a mineral of a certain description. A. keeps a shop near a mine where this mineral is found, and buys it from the miners, giving them goods in which he deals in exchange. A. must account to B. for the profit which he obtains by selling his own goods as well as for that which he derives from the sale of the mineral.

(b.) A., B. and C. are partners in trade. C., without the knowledge of A. and B., obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A. and B. are entitled to participate, if they please, in the benefit of the lease.

(c.) A., B. and C. carry on business together in partnership as merchants, trading between Bombay and London. D., a merchant in London, to whom they make their consignments, secretly allows C. a share of the commission which he receives upon such consignments, in consideration of C.'s using his influence to obtain the consignments for him. C. is liable to account to the firm for the money so received by him.

255. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

Profits made in competing business.

256. Every person introduced as a partner into a pre-existing firm, is subject to all the obligations incurred by the firm before he was introduced.

Liability of incoming partner.

257. A continuing guarantee given either to a firm or to a third person in respect of the transactions of a firm, is not revoked as to future transactions by any change in the firm to which, or in respect of the transactions of which, such guarantee was given.

Non-revocation of continuing guarantee by change in firm.

Non-liability of deceased partner's estate for subsequent obligations.

258. The estate of a partner who has died is not liable in respect of any obligation incurred by the firm after his death.

259. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be paid to him or applied in payment of his separate debts. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Payment of partnership-debts, and of separate debts.

260. After a dissolution of partnership the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership.

Continuance of partners' rights and obligations after dissolution.

261. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they had themselves notice of such dissolution.

Notice of dissolution.

262. In the absence of any agreement to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

Winding-up by Court after termination of partnership.

263. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint stock companies, shall be regulated by the law now in force in India relating thereto until further provision shall be made in that behalf.

Limited-liability partnerships, incorporated partnerships, and joint-stock companies.

FIRST SCHEDULE.

Number of Statute or Act.	TITLE OF ACT.	Extent of repeal.
Stat. 29 Car. 2, Cap. 3.	An Act for prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4 and 17.
Stat. 11 & 12 Vic. Cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.
Act XIII of 1840.	An Act for the amendment of the law regarding factories by extending to the territories of the East India Company, in cases governed by the English law, the provisions of the stat. 4 Geo. iv, c. 83, as altered and amended by the stat. 6 Geo. iv, c. 94.	The whole.
Act XIV of 1840.	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English law, the provisions of stat. 9 Geo. iv, cap. 14.	The whole, except Section 4.
Act V of 1866	To provide a summary procedure on Bills of exchange, and to amend in certain respects the commercial law of British India.	Section 10.
Act XV of 1866.	To amend the law of Partnership in India.	The whole.

SECOND SCHEDULE.

Number of Statute or Act.	TITLE OF ACT.	Extent of saving.
Act XI of 1841.	Military Courts of Requests Act	Section 9.
Act XXI of 1848.	For avoiding wagers.	The whole.
Act VI of 1849.	For securing Military and Naval pensions and superannuation allowances.	Section 2.
Act XIX of 1850.	Concerning the binding of apprentices.	Sections 2, 9, 10, 11, 12, 22.
Act XVIII of 1853.	For regulating the sale of spirituous liquors, &c., in cantonments.	So much as is not repealed.
Act XVIII of 1854.	An Act relating to Railways in India.	Sections 9, 10 & 11.
Stat. 17 & 18 Vic. Cap. 104.	The Merchant Shipping Act, 1854.	Section 544.
Act I of 1859.	For the amendment of the law relating to Merchant Seamen.	So much as relates to agreements with Seamen.
Act XIII of 1859.	To provide for the punishment of breaches of contract by artificers, workmen and labourers in certain cases.	The whole.
Act XV of 1863.	To amend Act I of 1859	Section 3.
Act III of 1865.	The Carriers' Act, 1865	The whole.
Act XIV of 1866.	The Indian Post Office Act, 1866	Section 65.
Act VIII of 1867.	To amend the law relating to Horse-racing in India.	The whole.

STATEMENT OF OBJECTS AND REASONS.

The Bill now submitted to the Council of the Governor General for making Laws and Regulations embodies the draft Law of Contract prepared under the superintendence of the Indian Law Commissioners. A series of sections having reference to one particular subject has been omitted for reasons which will be afterwards assigned; but with this exception no change has been made in the draft of the Commissioners other than the correction of some minor errors, of which a few appear to be either clerical or typographical.

"The Indian Contract Law"—which is the designation proposed for the measure—constitutes the second chapter transmitted to India of the intended Code of Substantive Civil Law. If it becomes law, it will differ in one important particular from the chapter which has already received legislative sanction. The "Indian Succession Act," so far at least as regards Intestate Succession, was never intended to include Hindoos and Mahomedans, and the Indian Legislature further exempted Hindoos from its operation. But the Commissioners recommend, and the present Bill proposes, that the new Indian Contract Law shall be of universal application in India.

The recommendation of the Commissioners appears to be justified, not only by the abstract consideration that Contract is the branch of Law on which men of all times and races have come most nearly to identical conclusions, but also by the actual condition of the Law of Contract in India. The state of that Law is thus described in general terms by the Commissioners:—

"Within the limits of the Presidency Towns, the decision of suits of the nature is practically governed by the Law of England, and everywhere else the Judge is to a great extent without the guidance of any positive Law beyond the rule that his decision shall be such as he deems to be in accordance with 'justice, equity, and good conscience.'"

This description needs only to be qualified by the remark that the decisions assumed to be dictated by 'justice, equity, and good conscience,' have of late years been much affected, as a fact, by the English Law of Contract as gathered from the ordinary text books in use among English practitioners.

The largeness of the sphere practically occupied in India by the English Law of Contract, is in truth the justification of the course which has been followed by the Commissioners. Their draft will be found to consist of the English Law of Contract, much simplified, and altered in some particulars so as to accommodate it to the circumstances of this country. As the sections relating to Sale do not apply to the sale of immovable property, and as the law regarding negotiable instruments forms no part of the present measure, the amount of Native law which it will displace will be extremely minute.

The principal changes which it is proposed to introduce into the English Law of Contract, considered as the basis of the present measure, are thus indicated by the Commissioners:—

"We have not adopted in framing these rules the provisions of the English Statute of Frauds which require certain contracts to be in writing.

These provisions are not of unquestionable expediency even in England; and we think that they are not suited to the habits and present condition of the people of India.

"We have considered whether it would be expedient to render binding in law promises made without consideration. By the English law such promises are held to be binding only when expressed in writings under seal. We have not recognized any distinction between writings under seal and writings not under seal; but we think that, in order to give validity to promises made without consideration, it ought to appear that they were made with due deliberation. In order to attain this object, we propose that such promises shall be binding only when they are given in writing, and are registered with the permission of the promisor, according to the provisions of the law for the time being in force for the registration of assurances.

"By the English law a promise by a creditor to give time for the payment of an existing debt, or the acceptance by him, in full satisfaction of his demand, of a smaller sum than that which is due to him, is not binding on him unless there has been some new consideration given for it, such as an undertaking to give an additional or different security, or to pay the debt in a manner or at a time more advantageous to the creditor than that originally agreed upon; or unless the creditor's engagement to take less than his due, or to give time, be contained in a composition deed or agreement entered into by the debtor with his creditors generally; but a slight variation of the terms of the contract will satisfy these conditions. We have provided, that a person who is entitled to claim performance of an engagement, may dispense with or remit such performance wholly or in part, or may accept instead of it any satisfaction which he thinks fit.

"With regard to goods sold by a person who has no right to sell them, the general rule of English law is that the owner of the goods retains the ownership notwithstanding his having lost the possession of them and their having been sold to a third person. But from this rule there is an exception in the case of goods sold in open market, an expression which, by the custom of London, applies to every shop within the city.

"It cannot be denied that the subject is difficult. We have to consider, on one hand, the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But, on the other hand, still greater weight appears to us to be due to the hardship which a *bona fide* purchaser would suffer were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is therefore on the side of a rule favourable to the purchaser; and we think that sound policy with respect to the interests of commerce points to the same conclusion.

"We have, therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if

the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them.

"Similar provisions have been inserted—in accordance, we may observe, with the spirit of the Factors' Act—to meet the cases of those who have purchased goods or taken them by way of pledge from persons in possession of any documentary title to the goods, where the circumstances are not such as to raise a reasonable presumption that the person in possession of the document has no right to sell or to pledge the goods.

"It would seem that by the English law if a buyer, or any person claiming under him, is by reason of the invalidity of the seller's title deprived of the thing sold, he cannot claim compensation from the seller for loss thereby caused. We propose that in such cases the seller shall be responsible, unless a contrary intention appears by the agreement.

"In order to avoid the litigation which arises under the English law on the subject of the distinction between penalty and liquidated damages where the contract contains a stipulation that a specified sum shall be paid in case of its breach, we propose that the rule of law shall have no regard to that distinction, but simply require payment of the specified sum.

"In dealing with the Law of Suretyship, we have not thought it right to recognize a transaction so complicated, and tending so much to the unfair devolution of liability on the surety, as that by which a creditor who makes a composition with, or agrees to give time to, or not to sue the principal, may yet reserve his rights and remedies against the surety. By the rule which we propose, an agreement between the creditor and the principal, by which the creditor makes a composition with, or agrees to give time to the principal, or not to sue him, will discharge the surety; no exception being made in favour of the creditor in the case where he has endeavoured to reserve his rights and remedies against the surety. From a wish to avoid subtleties, and the attaching of unforeseen consequences to men's actions, we have provided that where there are co-sureties, a release of one of them by the creditor shall not discharge the others, nor free that one from responsibility to them.

"Adopting a provision of the French and Italian Codes, we propose that the surety shall be discharged by any act or omission of the creditor, only in case the eventual remedy of the surety against the principal is thereby impaired. We also propose to enact that where upon the face of an agreement two persons are primarily liable to a third person, that liability shall not be affected so far as regards the third person by an arrangement between the two, that one of them shall be liable only upon the default of the other, even although such arrangement may have been known to the third person, unless he was a party to the arrangement. In this we adhere to the old and simple doctrine of the Common Law, rejecting the qualifications introduced by Courts of Equity.

"In our rules on the subject of Bailment we have discarded the complicated system of gradation

which the English law applies to the amount of care which a bailee is to be expected to exercise, and the responsibility which is to attach to him; and we have framed our proposed law on the principle that in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would take of his own goods, and that more should not be required of him in any case.

"We have endeavoured to improve the law applicable to the case where the bailor's goods have, without the consent of the bailor, been mixed up with the goods of the bailee, so that they cannot be separated. The remedy which our rule provides is, that the bailor shall be entitled to receive compensation for the loss of his goods, which seems more expedient than the provision of the English law, that the whole shall go indiscriminately to the person whose goods have been mixed without his consent.

"We have provided that a continuing guarantee given by, to, or for a firm, shall not be rendered invalid by a change in the firm.

"In regulating the devolution of rights and liabilities, we propose, in accordance with the rule of English Courts of Equity and of the Indian Code of Civil Procedure, that joint liabilities and rights shall, after the death of one of the persons liable or entitled, go to his representative jointly with the survivor, and after the death of the survivor to the representatives of both jointly.

"We propose to lay it down that a person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it if he was in reality acting not as agent but on his own account.

"In defining the responsibility of a master for the misconduct of his servant, we have stopped a little short of the limits assigned to it by the English law. We think that the responsibility ought to cease as soon as the misconduct assumes the character of intentional wrongdoing.

"According to the English law, when there is any partnership property, the separate property of any partner must be employed first in the payment of his separate debts; and the surplus, if any, in the payment of the partnership debts; but when there is no partnership property the separate property of any partner must be applied equally to the payment of all the partnership and separate debts for which such partner is liable. It thus depends upon the existence or non-existence of partnership property, no matter how small in amount, which of the two rules is to govern the division of the separate property of the partners. We have thought it right so to frame the law that the rule first stated, which is more equitable, shall prevail whether there is any partnership property or not. The principle on which we proceed is that of having regard to the views of the creditor in giving the credit. In contracts with a firm partnership property is primarily looked to; in dealings with a partner with which the firm has nothing to do, all that is looked to is his own sufficiency.

"Adopting a rule which is to be found in the German and the Italian Commercial Codes, we propose that every person introduced as a partner into a pre-existing firm shall be subject to all the obligations incurred by the firm before he was introduced.

"We have adopted, with such verbal alterations as were necessary to bring them into harmony with the language of our rules, the provisions of a law lately passed by the Indian Legislature, Act XV of 1860, for relieving those who participate in the profits of a partnership without being really partners, from becoming liable for the engagements of the firm."

It may be said of these proposed modifications of English Law, that while all, or nearly all of them, have commended themselves to the approval of enlightened lawyers, not a few are being gradually carried out in England without the aid of the legislature, though the direction given of late years to the current of judicial decision.

It has been stated that a certain number of sections contained in the Commissioners' draft, have been omitted from the present Bill. These sections, numbered from 51 to 59, will be found in the Appendix, together with the paragraph in the Commissioners' Report, which describes their character. They relate to the Specific Performance of Contracts and to Injunctions against breach of Contract; and they would in effect necessitate the repeal of certain portions of the Code of Civil Procedure.

The existing Law of India on the subject of the Specific Performance of Contracts, is given by Section 192 of the Code of Civil Procedure. The law on the subject of Injunctions against breach of Contract, which to a very great extent discharge the office of decrees for Specific Performance, is contained in Section 93 of the Code. The language of both sections is so wide as to embrace contracts of every description.

It cannot be said that the latitude thus given to Specific Performance and analogous remedies is without precedent. It is not known that in Continental European countries there is any limit to the power of decreeing the Specific Performance of Contracts, except the discretion of the Court. But the Law of India on the subject is considerably wider than the Scottish Law, which, again, is wider than the Law of England. The Law of Specific Performance in England is, in fact, the narrowest in the world—less probably owing to deliberate intention than to the reluctance of Equity Judges to put freely in motion the once cumbrous and costly machinery of the Court of Chancery.

There is no doubt that, from an English point of view, the Indian Law of Specific Performance is too little restricted. But, on the other hand, owing to difficulties of procedure, and especially to those arising out of the system of appeal, there are large numbers of contracts to which this class of remedies cannot be effectually applied, and it is believed accordingly that decrees for Specific Performance and Injunctions against breach of Contract are comparatively rare in India.

Under these circumstances, when the time for the first revision of the Code of Civil Procedure approached, a number of sections were prepared and (with amendments and additions) were inserted in a draft revised Code, having for their object to place the extraordinary civil remedies on what appeared to be a more satisfactory footing. On the one hand, the classes of contracts to which they were applicable were more strictly defined, and various provisions were inserted to prevent the

remedies, themselves from operating with undue harshness against defendants. On the other hand, the procedure was so simplified as to make the remedies, thus altered and limited, of considerably easier application.

The sections in question, together with the draft of a revised Code of Procedure, were submitted by the Secretary of State to the Indian Law Commissioners. The Commissioners, in dissenting from them, expressed an opinion that no Law of Specific Performance of the kind proposed, however carefully guarded, would be safe from abuse in India.

The question thus raised by the Law Commissioners is doubtless one of much difficulty as well of great importance. It may be argued on the one hand that there is no country in which damages afford practically so imperfect a redress for breach of contract as they do in India, and none in which the prospect of having to pay damages operates so slightly to compel the performance of agreements. It may be contended on the other side that, under the circumstances of the country and people, all facilities for applying any unusual compulsion are peculiarly liable to be abused.

The sections omitted from the present Bill were doubtless framed by the Commissioners under the influence of the feeling just indicated. They in effect propose for India a Law of Specific Performance of Contract and of Injunction against meditated breach of contract, which would be narrower than that of England, which again is narrower, as has been stated, than that of any known community.

It is now proposed to omit those sections on two grounds. The first is that, in the opinion of the Member of Council charged with this Bill—an opinion which apparently coincides with that entertained by the framers of the Code of Civil Procedure—the proper place for defining the extraordinary, as well as the ordinary, civil remedies applicable in suits on contract is a Code of Procedure, not a Code of Substantive Law. Owing to the historical connection between law and procedure, there is often a close association in men's minds between the two, and sometimes there is practical difficulty in disentangling them. If, however, we could suppose that a Code of Substantive Civil Law and a Code of Civil Procedure were being framed simultaneously, and that the framers of the Codes had the power of placing the Law of Specific Performance in either Code, there cannot be much doubt that he would consider it as cognate to Procedure rather than to Substantive Law.

The second reason for omission is of a less technical character. It appears very desirable to leave the new Substantive Law of Contract to its operation for some little time, before that question of remedies in cases of breach of contract, which has been so long and so hotly disputed in India, is brought forward anew for discussion. It may be reasonably suspected that much of the disinclination which has been felt to investing the plaintiff in suits on contract with more than a bare claim to pecuniary damages, has arisen from the feeling that the Civil Courts of the Mofussil, in the absence of definite and accessible rules for their guidance, have scarcely been in a position to determine with accuracy the proper legal relations of contracting parties, or to apply to contracts the

proper tests of validity and invalidity. If, however, the Legislature adopts the present Bill, India will be in possession of a body of Contract-Law which leaves nothing to be desired in point of simplicity and comprehensiveness, in respect of the essential equity of its provisions, and in respect of the perspicuity with which those provisions are set forth. It is probable, and indeed certain, that the effect of the new law will be, after a while, to place all questions of contract, and of procedure in suits on contract, in a far clearer light. A

distinct advantage will thus be gained by postponing the subject of Specific Performance and other cognate remedies until the Legislature again addresses itself to the revision of the Code of Civil Procedure—a revision which, after it had been proceeded with some way, has been deferred for the present under the instructions of Her Majesty's Government.

SIMLA,
The 9th July 1867. }

H. S. MAINE.

APPENDIX.

"We propose that the extraordinary remedy of an order for Specific Performance should be restricted to the case of engagements for the creation or transfer of any interest in immoveable property, or for the delivery of any specific article of moveable property. We have not, however, thought it right to include in the former category agreements to cultivate land in a particular manner or to grow particular crops; and we have provided that Injunctions shall not be granted to restrain the breach of engagements relating to the cultivation of land or the growing of particular crops.

"51. Specific Performance of a contract is the doing or the delivery of the thing contracted for, as the case may be, according to the terms of the contract.

"52. Where an engagement by contract has been made between any persons for the creation or transfer of any interest in immoveable property, or for the delivery of any specific article of moveable property, and the party who has entered into such engagement fails to perform it, the Court may, at the suit of any other party to the contract, order Specific Performance of the engagement, with or without compensation in respect of loss or damage caused by his default.

"Explanation.—An agreement to cultivate land in a particular manner, or to grow particular crops, does not create such an interest in immoveable property as is contemplated by this section.

Illustrations.

"(a.) A. agrees with B. to sell him a house for 1,000 Rupees. B. is entitled to a decree directing A. to convey the house to him, he paying the purchase money.

"(b.) A. agrees with B. to give him a bill of lading of a certain cargo. B. is entitled to have the bill of lading signed by A.

"(c.) A. agrees with B. to prepare and sow, and cultivate a field with indigo, and to deliver him the crop; when the crop is cut and ready for delivery B. is entitled to have the crop delivered to him in specie, but he is not entitled to a decree directing A. to prepare, or sow, or cultivate.

"(d.) A. agrees with B. that he will paint a picture for him, and the picture is painted. B. is entitled to have it delivered to him, but B. is not entitled to a decree ordering A. to paint or to complete the painting of the picture.

"(e.) A. agrees with B. to edit a periodical work for the remuneration of 1,000 Rupees per month. B. cannot enforce against A. the Specific Performance of this contract; and as the rights and obligations are mutual, A. cannot enforce against B. the Specific Performance of this contract.

"(N. B.—In this case either party can obtain compensation for the loss sustained by him by the failure of the other to perform his engagement.)

"(f.) A. agrees with B. to deliver to him 40 chests of indigo at 1,000 Rupees per chest. A. fails to perform his engagement. B. cannot obtain Specific Performance of the contract, but can obtain compensation for the loss sustained by him by reason of A.'s failure to complete the contract.

"(g.) A. agrees with B. to sell him a house for 10,000 Rupees, the price to be paid and possession given on the 1st of January 1865. A. fails to perform his engagement. B. brings his suit for Specific Performance, which is decided in his favour on the 1st January 1866. The decree ought, besides ordering Specific Performance, to award to B. compensation for any loss or damage which he has sustained by A.'s refusal.

"53. Where a party to a contract is unable to perform the whole of the engagement which he has entered into with another party, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the Specific Performance of so much of the engagement as can be performed, and award compensation in money for the deficiency. In such case neither party shall be entitled to compensation for loss or damage caused by the neglect or default of the other party to perform the engagement.

Illustration.

"A. agrees to sell B. a piece of land consisting of 100 biggahs. It turns out that 98 biggahs of the land belong to A. and the two remaining biggahs to a stranger, who refuses to part with them. A. may be directed at the suit of B. to convey to B. the 98 biggahs and to make compensation to him for not conveying the two remaining biggahs; or B. may be directed, at the suit of A., to pay to A. on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

"54. Where a party to a contract is unable to perform the whole of the engagement which he has entered into with another party, and the part which must be left unperformed forms a considerable portion of the whole, the party in default is not entitled to obtain a decree for Specific Performance, but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the engagement as he can

perform, provided that the party seeking Specific Performance relinquishes all claim to further performance, and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the other party.

Illustrations.

"(a.) A. agrees to sell to B. a piece of land consisting of 100 biggahs. It turns out that 50 biggahs of the land belong to A., and the other 50 biggahs to a stranger, who refuses to part with them. A. cannot obtain a decree against B. for the Specific Performance of the contract; but if B. is willing to pay the price agreed upon, and to take the 50 biggahs which belong to A., waiving all right to compensation either for the deficiency or for loss sustained by him through A.'s neglect or default, B. is entitled to a decree directing A. to convey those 50 biggahs to him on payment of the purchase money.

"(b.) A. agrees to sell to B. an estate with a house and garden for 1,00,000 Rupees. It turns out that A. is unable to convey the garden. A. cannot obtain a decree against B. for the Specific Performance of the contract; but if B. is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A.'s neglect or default, B. is entitled to a decree, directing A. to convey the house to him on payment of the purchase money.

"55. Except in cases coming under one or other of the two last preceding sections, it is not competent for the Court to direct the Specific Performance of a part of an engagement by contract.

"56. It shall be competent to the Court to award compensation in cases where Specific Performance is sued for, and the Court does not think fit to order it.

"57. In every case the Court shall have power to give compensation in money in lieu of the Specific Performance of the contract, where it shall appear to the Court that Specific Performance would inflict damage or injury on one party to the contract without any corresponding benefit to the party seeking Specific Performance.

"58. Where the Specific Performance of an engagement is ordered, and it appears to the Court that such Specific Performance ought to be made by a party by executing a conveyance, or by endorsing a negotiable instrument, and the party ordered to execute or endorse such conveyance or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed, may prepare a conveyance or endorsement of the instrument in accordance with the terms of the decree, and tender the same to the Court for execution upon the proper stamp (if any is required by law), and the signature thereof by the judge, shall have the same effect as the execution or endorsement thereof by the party ordered to execute.

"59. Where a contract contains an engagement, express or implied, by one party, that he will abstain from doing any act, the Court may at the suit of another party issue an Injunction to restrain the breach of such engagement, provided such other party has not failed to perform his own engagement.

"*Exception.*—This section shall not apply to engagements relating to the cultivation of land or the growing particular crops.

Illustrations.

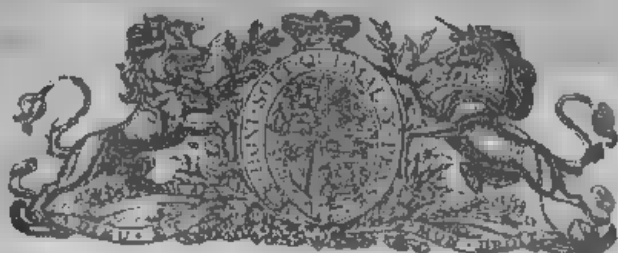
"(a.) A. agrees with B. that he will sing at B.'s theatre for a twelvemonth. B. cannot have an order directing A. to sing, but he is entitled to have an order restraining A. from singing at any other place of entertainment.

"(b.) B. agrees with A. that he will serve him faithfully for twelvemonths as a clerk. A. is not entitled to an order directing B. to serve, but he is entitled to an order restraining B. from serving a rival house, or doing any other act to the injury of A. in his business.

"(c.) A. agrees with B. that in consideration of a sum of money to be paid to him by B. on a day fixed, he will not set up a certain business within a specified distance. B. makes default in payment of the money. A. cannot be restrained from carrying on business within the specified distance."

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Department (Legislative.)



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SIMLA, SATURDAY, AUGUST 3, 1867.

HOME DEPARTMENT.

LEGISLATIVE.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 18th July 1867, and is hereby promulgated for general information:—

ACT No. XXXII of 1867.

An Act to enable the Governor General in Council to delegate to a Chief Commissioner powers conferred on a Local Government.

WHEREAS it is expedient to enable the Governor General of India in Council to delegate to any of the Chief Commissioners of Oudh, the Central Provinces, and British Burmah, any power conferred on the Governor General in Council as the Local Government of the territories under the administration of such Commissioner by any Act of the said Governor General in Council; It is hereby enacted as follows:—

1. It shall be lawful for the Governor General of India in Council, by a Notification published in the *Gazette of India*, to delegate to the Chief Commissioner of Oudh, the Central Provinces, or British Burmah, as the case may be, all or any of the powers heretofore or hereafter conferred by any Act of the Governor General of India in Council on the Governor General of India in Council as the Local Government of the territories under the administration of such Chief Commissioners; and all acts done by the Chief Commissioner, to whom any such power shall have been delegated as aforesaid, in exercise of the same power, shall be as valid as if they had been done by the said Governor General in Council.

Governor General in Council empowered to delegate to Chief Commissioners powers given to Local Government by Act of Governor General in Council.

Short title.

2. This Act may be called "The Chief Commissioners' Powers' Act."

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Department (Legislative).

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 18th July 1867, and is hereby promulgated for general information:—

ACT No. XXXIII of 1867.

An Act to amend Act No. XXXI of 1861.

WHEREAS it is expedient to amend Act No. XXXI

Preamble. of 1861 (to regulate the manufacture of Saltpetre and the sale of Salt aduced in the refinement thereof); It is hereby enacted as follows:—

1. Section 6 of the said Act shall be read as if for the words "fine of Rupees five hundred," the following were substituted (that is to say), "fine not exceeding Rupees five hundred."

Amendment of Act XXXI of 1861, Section 6.

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,
Home Department (Legislative).

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st August 1867, and is hereby promulgated for general information:—

ACT No. XXXIV of 1867.

An Act to repeal Act No. XIX of 1866 in the places to which the Madras Salt Excise Act, 1867, may be made applicable.

WHEREAS it was enacted by Section 1 of Act No. XIX of 1866 (to enhance the price of Salt manufactured and sold under the orders of the Governor of the Presidency of Fort Saint George in Council), that Section 48 of Act No. VI of 1844 should be repealed, and that, in lieu thereof, the following section should be substituted (that is to say):—

"XLIII. The price to be paid to the Government of the Presidency of Fort Saint George, for salt manufactured and sold under the orders of the Governor of the Presidency in Council, for consumption within the territories subordinate to the same Presidency, shall, from and after the passing of this Act, be one Rupee and eleven annas for every three thousand two hundred tolas weight of salt."

And whereas, with the previous sanction of the Governor General of India, a Bill to be called the Madras Salt Excise Act, 1867, has been introduced into the Council of the Governor of Fort Saint George for the purpose of making Laws and Regulations, to enable the Local Government to levy a duty, by way of Excise, on salt manufactured in the districts to which such Act may be made applicable, and there to fix the Salt Excise and Import Duties, and the selling price of salt imported by the Government, at such rates as the Governor of Fort Saint George in Council, with the sanction of the Governor General of India in Council, may, from time to time, determine: And whereas, in order to give effect to the proposed enactment, it is necessary to render the said Act No. XIX of 1866, and the section substituted thereby for the original Section 43 of Act No. VI of 1844, inoperative in those districts to which the said Madras Salt Excise Act, 1867, may be made applicable; It is hereby enacted as follows:—

1. In all districts, or parts of districts, of the Madras Presidency to which the said Madras Salt Excise Act of 1867 may be made applicable; Act No. XIX of 1866 of the Governor General of India in Council and the said section thereby substituted for the original Section 43 of Act No. VI of 1844, shall be held to be repealed and of no effect,

WHITLEY STOKES,

Asst. Secy. to the Govt. of India,

Home Dept. (Legislative).

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 17th July 1867, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 19 of 1867.

THE OUDH RENT ACT.

CONTENTS.

Preamble.

CHAPTER I.

PRELIMINARY.

Section.

1. Short Title and Extent of Act.
2. Repeal of laws.
3. Interpretation Clause.

CHAPTER II.

OF CERTAIN RIGHTS AND LIABILITIES OF LANDLORDS AND TENANTS.

Right of Occupancy.

4. Tenants having a right of occupancy.

Tenant's right to Lease.

5. Tenant entitled to a lease.
6. Lease to which tenant having right of occupancy is entitled.
7. Lease to which tenant not having right of occupancy is entitled.

Section.

Lessor's right to Counterparts.

8. Lessor entitled to counterpart.

Receipts.

9. Receipts for rent.

Deposit of Rent in Court without suit.

10. Power to pay into Court without suit brought amount of rent due.
11. Procedure on making and withdrawing such payment.
12. Limitation of suits for balance of rent.

Compulsory Attendance or Payment.

13. Landlord not to compel attendance of tenant. Payment of rent to be enforced only under this Act.

Excessive exaction. Illegal extortion.

14. Compensation for exactions in excess of rent.
15. Compensation for extorting payment of rent.

Abatement of Rent.

16. Suits for abatement of rent of tenant without right of occupancy.
17. Suits for abatement of rent by tenant having a right of occupancy, or by under-proprietor.

Remission of Rent.

18. When Court may allow remission from rent.

Relinquishment of Land.

19. Relinquishment of land by tenant after notice given.

Arrears of Rent.

20. Interest on arrears of rent.
21. Sublessor's liability to have his lease cancelled for arrears.

Compensation for Tenants' Improvements.

22. Tenant's right to compensation for improvements.
23. "Improvements" defined.
24. Compensation how made.
25. Provision for difference as to amount or value of compensation.
26. Power to make rules.
27. Nothing in Sections 23, 24, 25 to affect agreements.
28. Tender of lease for 20 years to bar right to claim compensation.

CHAPTER III.

COMMUTATION AND PAYMENT OF RENT IN KIND.

28. Commutation of rents in kind.
29. Chief Commissioner may declare Section 28 applicable to any place, and the officers to decide cases under that section.
30. Division and appraisement of produce taken for rent.
31. Dispute regarding division or appraisement.

CHAPTER IV.

ENHANCEMENT OF RENT.

32. Enhancement of rent of tenant with right of occupancy.
33. Nothing in Section 32 to affect terms of written contract.
34. Term for re-enhancement after decision fixing rent under Section 32.
35. Extent of re-enhancement.
36. Enhancement of rent of tenant not having right of occupancy holding without, or after expiry or cancellation of, written engagement.
37. Service and contents of notice of enhancement.
38. Notice of enhancement, how contested.
39. Grounds on which tenant not having a right of occupancy may contest notice.
40. Court not to enquire into propriety of rate of rent payable by tenant not having right of occupancy.

CHAPTER V. EJECTMENT.

Section.

41. Ejectment for arrears of rent.
42. Ejectment of tenant having right of occupancy.
43. Time of ejectment.
44. Tenant not liable to ejectment without notice.
45. Liability to ejectment how contested.
46. Application in absence of suit for court's assistance to eject.
47. Tenant not having right of occupancy may contest liability to ejectment.

CHAPTER VI.

DISTRAINT FOR ARREARS OF RENT.

48. Recovery of arrears of rent by distraint. Proviso as to tenants who have given security for payment of rent. As to co-sharers. As to Patildar estates.
49. No distraint in certain cases.
50. Power of distraint by whom exercisable. Liability of principal of agent to distraint.
51. Crops liable to distraint.
52. Demand of arrear before or at time of distraint.
53. Value of distress. Service of list of property to be distrained.
54. Standing crops when distrained to be reaped and stored.
55. Application by distrainer in case of resistance.
56. Persons empowered to distrain may authorize their servants to do so.
57. Withdrawal of distress on tender of arrear and expenses.
58. Distrainer to sue for arrears within ten days of making distress.
59. Compensation where distrainer fails to procure a decree under Section 58.
60. Suit to contest distrainer's demand.
61. Distrainer to prove the arrear in suits to contest his demand. Compensation for vexatious distraint.
62. Suit by a third party claiming property distrained. Compensation for illegal distraint.
63. Landlord's prior claim to distrainable produce in possession of defaulting tenant.
64. Stranger claiming to be landlord and to have right of distraint to be made a party.
65. If distrainer does not sue under Section 58 distress to be void.
66. Sale of perishable crops.
67. Compensation for illegal distraint.
68. Compensation for illegal act of distrainer.
69. Compensation for distraint falsely purporting to be under this Act.
70. Procedure in case of resistance to distraint.

CHAPTER VII.

JURISDICTION OF THE COURTS.

Suits cognizable.

71. Suits cognizable under this Act.

Grades of Courts.

72. Grades of Courts for purposes of this Act.
73. Chief Commissioner may declare grade of Tahsildar or Assistant Commissioner.
74. Deputy Commissioner to have Collector's powers.
75. Settlement Officers may be invested with powers of Collector, &c., under this Act.
76. Jurisdiction of Assistant Collector of second class.
77. Jurisdiction of Assistant Collector of first class.
78. Jurisdiction of Deputy Collector.
79. Jurisdiction of Collector.
80. Jurisdiction of Commissioner.
81. Jurisdiction of Financial Commissioner.

Appeals and Rehearing.

82. Time for presenting appeals.
83. No appeal, except in certain cases, from Collector's decree for money below Rupees 100.
84. Rehearing on discovery of new evidence.

Section.

Distribution of Business.

85. Collector may distribute business in subordinate Courts.

Transfer of Suits and Appeals.

86. Transfer suits from subordinate Courts to Court of Commissioner or Collector.
87. Financial Commissioner may transfer suits and appeals from one subordinate court to another.

Miscellaneous.

88. Subordination of Courts.
89. Joinder of claim for arrears with claim to eject tenant or cancel lease.
90. Suits by or against managing Agents or Tahsildars of Khani estates.
91. Courts may sit anywhere within limits of their jurisdiction.

CHAPTER VIII.

LIMITATION OF SUITS.

92. General Rule.
93. Suits for delivery of leases or counterparts.
94. Suits for arrears of rent, or revenue, or share of profits.
95. Suits for settlement of accounts.
96. Suits against agents for money or delivery of accounts or papers.
97. Limitation of suits for compensation under sections 67, 68, 89.

CHAPTER IX.

PROCEDURE.

98. Civil Procedure Code to be procedure under this Act.
 99. Particulars to be added to plaint.
 100. Summons to defendant to be for final disposal.
 101. Defendant may pay money into Court.
 102. If defendant pay less than amount claimed, plaintiff may proceed.
 103. Collector may make local enquiry.
 104. Immediate execution of decree.
 105. No execution to be issued three years after judgment, unless for sum exceeding Rupees 500.
 106. Enforcement of decree for delivery of papers or accounts.
 107. Alteration of Section 244 of Code of Civil Procedure.
 108. Sale of transferable tenures in execution of decrees for arrears of rent.
- Schedules.

A Bill to consolidate and amend the Law relating to Rent in Oudh.

WHEREAS it is expedient to consolidate and amend the law relating to rent in Oudh and to other matters connected therewith; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be cited as "The Oudh Rent Act," and shall extend only to the territories for the time being under the administration of the Chief Commissioner of Oudh.

2. All laws, orders having the force of law and rules in force in Oudh, inconsistent with any of the provisions of this Act, are repealed.

3. In this Act, unless there be something repugnant in the subject or context,
- Interpretation Clause.

- "Oudh" means the territories for the time being under the administration of the Chief Commissioner of Oudh ;
- "Court" means any Judicial Officer presiding in a Court of Revenue for the disposal of matters under this Act ;
- "Assistant Commissioner" includes an Extra Assistant Commissioner ;
- "Land" includes the ungathered produce of thereof, whether spontaneous or otherwise, and whether growing in earth or water ;
- "Revenue" means the money payable annually to the Government on account of land ;
- "Rent" means the money not being revenue, or the portion of the produce of land, payable on account of the use or occupation of land ;
- "Arrear of rent" means any instalment of rent which is not paid on or before the day when the same becomes due, whether under an instrument in writing or according to local usage ;
- "Under-proprietor" means any person possessing a heritable and transferable right of property in land for which he is liable to pay rent ;
- "Tenant" means any person, not being an under-proprietor, who is liable to pay rent ;
- "Landlord" means any person entitled to receive rent from an under-proprietor or tenant ;
- "Representative" means the heir or any other person legally representing a deceased person. It also means the guardian of a minor and the legal curator of a lunatic or idiot ;
- "Suit" means a suit instituted by a plaintiff in the manner provided by this Act up to and including the decree of the Court of first instance ;
- "Year" and "month" respectively mean a year and month reckoned according to the English calendar ;
- "Section" means a section of this Act ;
- "Number" Words in the singular number, include the plural ; words in the plural number, include the singular ; and words importing the male sex include females.

CHAPTER II.

OF CERTAIN RIGHTS AND LIABILITIES OF LANDLORDS AND TENANTS.

Right of Occupancy.

1. Tenants, who have lost all proprietary right, whether superior or subordinate, in the lands which they hold or cultivate, shall, so long as they pay the rent payable for the same, have

a right of occupancy under the following rule (that is to say) :—

Every such tenant, who, within thirty years next before the 13th day of February 1856, has been, either by himself, or by himself and some other person from whom he has inherited, in possession of the proprietary right in a village or estate, shall be deemed to possess an hereditary right of occupancy in the land which he cultivated or held in such village or estate on the 24th day of August 1866 : Provided that such land has not come into his occupancy, or the occupancy of the person from whom he has inherited, for the first time since the said 13th day of February 1856 : Provided also that no such tenant shall have a right of occupancy in any village or estate in which he or any co-sharer with him possesses any under-proprietary right.

Tenants' right to leases.

5. Every tenant is entitled to receive from his landlord a lease executed by him and containing the following particulars :—

The quantity of land ; and, where the fields comprised in the lease have been numbered in a Government survey, the number of each field :

The amount of annual rent reserved :

The instalments in which the same is to be paid :

Any special conditions of the lease :

If the rent is payable in kind, the proportion of produce to be delivered, and the time, manner and place of delivery.

6. Tenants having a right of occupancy are entitled to receive leases at rates of rent determined in accordance with the provisions of Section 32.

7. Tenants not having a right of occupancy are entitled to leases only at such rates of rent as may be agreed on between them and the landlord.

Lessor's right to counterparts.

8. Every person who grants a lease is entitled to receive a counterpart from the person to whom the lease is granted.

Receipts.

9. Receipts for rent and acknowledgments of the tender of rent shall specify the year or years on account of which the rent is acknowledged to have been paid or tendered ; and any refusal to make such specification shall be held to be a withholding of a receipt or acknowledgment.

Deposit of Rent in Court without suit.

10. If any under-proprietor or tenant shall, at the place where the rents of the land held or cultivated by him are usually payable, tender payment to the landlord of what the tenant shall consider to be the full amount of rent due from him at the date of the tender to such landlord in respect of such land, and if the amount so tendered shall not be accepted and a receipt in full forthwith granted, it shall be lawful for the under-proprietor or tenant, without

any suit having been instituted against him, to deposit such amount in the Collector's Court to the credit of the landlord; and such deposit shall, so far as the under-proprietor or tenant and all persons claiming through or under him are concerned, operate as a payment then made by the under-proprietor or tenant of the amount deposited to such landlord.

11. The Collector shall receive such deposit on the application of the under-proprietor or tenant or his authorized agent made in writing upon paper bearing a stamp of such value as would be necessary on the institution of a suit for arrears of rent under this Act, for an amount equal to that which it is intended to deposit; and on the under-proprietor or tenant or his authorized agent making a declaration in the form or, as nearly as circumstances will admit, in the form set forth in Schedule A hereto annexed, the Collector shall give a receipt for the deposit. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false or shall not know or believe to be true, he shall be deemed to have committed the offence of giving false evidence in a stage of a judicial proceeding. Upon receiving the money so deposited the Collector shall issue a notice to the person to whose credit it has been deposited in the form set forth in the Schedule B hereto annexed. Such notice shall be served by the Collector without the payment of any fee upon the person to whom it is addressed or upon his authorized agent. In the absence of any such agent it may be served by sticking up a notice of the same in the Office of the Collector and another copy at the place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued or his authorized agent shall appear and apply that the money in deposit be paid to him, it shall immediately be paid accordingly.

12. Whenever a deposit shall have been made under the provisions of this Act, no suit shall be brought against the depositor or his representatives on account of any rent which accrued due in respect of the land last hereinbefore mentioned prior to the date of the deposit unless such suit is instituted within six months from the date of the service of the notice mentioned in Section 11.

Compulsory attendance or payment.

13. No landlord is authorized to compel the attendance of any under-proprietor or tenant for the adjustment of his rent, or for any other purpose, nor can he legally adopt any means of compulsion for enforcing payment of the rents due to him other than are authorized by the provisions of this Act.

Excessive Exaction. Illegal Extortion.

14. Every under-proprietor or tenant, from whom any sum is exacted in excess of the rent specified in his lease or otherwise legally claimable, and every under-proprietor or tenant, from whom a receipt or acknowledgment is withheld for any sum of money paid or tendered by him as rent, shall be entitled to recover from the person receiving such rent, to whom

such rent is tendered, compensation not exceeding double the amount so exacted or paid or tendered.

15. If payment of rent, whether the same be legally due or not, is extorted from any under-proprietor or tenant by any means not authorized by this Act, such under-proprietor or tenant shall be entitled, in addition to any amount for which he may obtain a decree in respect of such payment, to receive such compensation not exceeding in any case the sum of two hundred Rupees, as the Court may think proper to award. An award of compensation under this section shall not bar or affect any penalty to which the defendant may be subject under the criminal law.

Abatement of Rent.

16. No suit for an abatement of rent shall be brought by any tenant not having a right of occupancy and not holding under a lease, except on the ground that the area of the land has been diminished by diluvion or otherwise.

17. No suit for an abatement of rent shall be brought by any tenant having a right of occupancy or holding under a lease, or by any under-proprietor except on the ground that the area of the land has been diminished by diluvion or on some ground specified in the lease, agreement or decree under which he holds.

Remission of Rent.

18. Notwithstanding anything contained in Sections 16, 17 and 40, it shall be lawful for the Court in making a decree for an arrear of rent, to allow such remission from the rent payable by any tenant, as may appear equitable, if the area of the land in the occupation of such tenant has been diminished by diluvion or otherwise, or if the produce of such land has been diminished by drought or hail, or other calamity beyond the control of the tenant, to such an extent that the full amount of rent payable by such tenant cannot, in the opinion of the Court, be equitably decreed.

Relinquishment of Land.

19. Any tenant who desires to relinquish the land held by him, shall be at liberty to do so provided he gives notice of such desire in writing to the landlord or his authorized agent on or before the 15th day of May next following. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the landlord or his authorized agent refuse to receive such notice and to sign a receipt for the same, the tenant may make an application to the Court, which shall thereupon cause the notice to be served on such landlord or his agent in the manner provided in Section 37: Provided that if notice of enhancement of rent shall have been served on the tenant in manner provided by Section 37, he may, within fifteen days of receiving the notice, signify in writing his intention to relinquish his holding; and such writing if served on the landlord or his authorized agent shall be held to be a notice under this Section.

Arrears of Rent.

20. An arrear of rent, unless otherwise provided by written agreement, shall bear interest at twelve per cent. per annum.

Interest on arrears of rent.

21. When an arrear of rent shall be adjudged to be due from any sub-lessor, his lease shall be liable to be cancelled, and he himself to be ejected: Provided that no such lease shall be cancelled, nor the sub-lessor ejected, otherwise than in execution of a decree under the provisions of this Act.

Sub-lessor's liability to have his lease cancelled for arrear.

Compensation for Tenants' Improvements.

22. If a tenant, or the person from whom he shall have inherited, make any such improvements on the land in his occupancy as are hereinafter mentioned; and if a landlord serve, under this Act, upon any such tenant not having a right of occupancy, a notice of ejectment or enhancement of rent from or in respect of the land in his occupation, or bring a suit to eject or to enhance the rent of any such tenant having a right of occupancy, the tenant shall be entitled to compensation for the outlay, in money or labour, or both, in making such improvements, which shall have been effected by him, or the person from whom he has inherited, within thirty years next before the service or institution of such notice or suit as aforesaid.

Tenants' right to compensation for improvements.

23. The word "improvements," as used in the last preceding Section, means works by which the annual letting value of the land has been, and, at the time of demanding compensation, continues to be, increased, and shall comprise—

"Improvements" defined.

1st.—The construction of wells and of works for the storage of water, for applying water for irrigation, for drainage, and for protection against floods; the reclaiming, clearing and enclosing of waste lands and jungles; and other works of a like nature;

2nd.—The renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value.

24. Such compensation may, at the option of the landlord or his representative, be made,—

Compensation how made.

(1).—By payment in money;

(2).—By the grant of a beneficial lease of the land by the landlord or his representative to the tenant or his representative; or

(3).—Partly by payment in money, and partly by the grant of such lease as aforesaid.

25. In case of difference as to the amount or value of the compensation tendered, the amount of the payment or the terms of the lease, or both, shall be determined by the Court; and it shall be lawful for the Chief Commissioner of Oudh, with the previous sanction of the Governor General of India in Council, to make rules consistent with this Act, for giving effect to the provisions contained in the former part of this Section, and from time to time, with such sanction as aforesaid, to alter and add to the rules so made.

Provision for difference as to amount or value of compensation.

Power to make rules.

26. Nothing in Sections 23, 24 and 25 shall affect the terms of any agreement in writing which may have been, or may be, entered into between a landlord and a tenant respecting the making of, or compensation for, improvements.

Nothing in Sections 23, 24, 25 to affect agreements.

27. If in any case a landlord shall tender to a tenant a lease of the land in his occupation, for a term of not less than twenty years from the date of the tender, at the annual rent then paid by the tenant or at such other annual rent as may be agreed upon, such tender, if accepted by the tenant, shall be deemed to be a bar to any claim by him or his representative in respect of improvements previously made on such land by the tenant or the person from whom he shall have inherited.

Tender of lease for 20 years to bar right to claim compensation.

CHAPTER III.

COMMUTATION AND PAYMENT OF RENT IN KIND.

28. In any district in which a settlement of revenue is in progress, it shall be lawful for any officer employed in making or revising such settlement, in any case in which the rent of a tenant having a right of occupancy is paid in kind or by the estimated value of a portion of the crop, to commute, on the application either of the landlord or the tenant, such rent into a rent in money. The amount of rent thus fixed shall be binding upon the parties concerned. All decisions already passed by any such officer, commuting rents in kind or by valuation to rents in money, shall, subject to the same appeal as is given by this Act in respect of decisions passed in suits, be binding on the parties concerned.

Commutation of rents in kind.

29. It shall be competent to the Chief Commissioner to declare the provisions of section 28 applicable to any district or portion of a district, in which a settlement of revenue is not in progress; and to declare what officers are empowered to hear and decide cases under this section; and, with the sanction of the Governor General in Council, to make rules consistent with this Act for the guidance of Officers acting under this section and Section 28.

Chief Commissioner may declare Section 28 applicable to any place, and the officers to hear and decide cases under that Section.

30. Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop or other procedure of a similar nature requiring the presence both of the tenant and landlord either personally or by a representative, if the landlord shall neglect to attend at the proper period, the tenant may apply to the Court, which may thereupon issue notice to the landlord to attend within a certain period; and, failing his appearance within the period so fixed, the tenant may proceed to divide, estimate, or appraise the crop in the presence of two witnesses, or he may present a petition to the Court requesting that a proper Officer be deputed to make the division, estimate, or appraisement.

Division and appraisement of produce taken for rent.

31. Wherever rent is taken in the manner mentioned in the foregoing section, and a dispute regarding the division, estimate, or appraisement, is alleged in a petition of plaint by either of the parties concerned, the Court may depute an officer of its establishment, before whom the division, estimate, or appraisement shall be made; and the decision of such officer, in respect of such division, estimate or appraisement, shall, subject to the orders of the Court on the issue of a suit, be final.

Dispute regarding division or appraisement.

CHAPTER IV.

ENHANCEMENT OF RENT.

32. No tenant having a right of occupancy of any land shall be liable to an enhancement of the rent paid by him in respect of such land, except in pursuance of a decree made under this Act on some one of the following grounds, (that is to say):—

Enhancement of rent of tenant with a right of occupancy.

1st Case.—That the rate of rent so paid by such tenant is below the prevailing rate payable by the same class of tenants having a right of occupancy for land of a similar description, and with similar advantages, situate in the same village.

Rule.—In this case the Court shall enhance the rent of such tenant to the rate so prevailing.

2nd Case.—That the rent paid by such tenant is more than 12½ per cent. below the rent of land of a similar description, and with similar advantages, paid by tenants of the same class not having a right of occupancy.

Rule.—In this case the Court shall decree an enhancement, such as will raise the rent to the level of the rent assessable at the rates paid by tenants, of the same class not having a right of occupancy for land of a similar description, and with similar advantages, less 12½ per cent.

3rd Case.—That the quantity of land held by such tenant has been ascertained by a measurement made by a proper officer to be greater than the quantity for which rent has been previously paid by such tenant.

Rule.—In this case the Court shall decree rent for the surplus land calculated at the same rates as those paid for the rest of the holding, or, if the plaintiff shall so desire, at rates to be fixed by the first or the second of the said rules, as the case may be.

33. Nothing contained in section 32 shall be held to affect the terms of any written contract entered into between a landlord and tenant, when such contract contains any express stipulation contrary to the provisions of the same section.

Nothing in Section 32 to affect terms of written contract.

34. After a decision has been passed in accordance with section 32, no suit shall lie for re-enhancement of such rent until the expiration of five years from the date of such decision, except under the said third case, or until re-assessment within the said term of five years of the revenue of such land.

Term for re-enhancement, after decision fixing rent under Section 32.

35. On such re-assessment of the revenue the landlord may institute a suit to enhance the rent of such tenant to a sum not exceeding double

Extent of re-enhancement.

the average amount of the revenue imposed upon land of a similar description and with similar advantages held by tenants of the same class in the same village.

36. No tenant, not having a right of occupancy, who holds or cultivates land without a written engagement, or under a written engagement not specifying the term of his holding, or whose holding has expired, or has been cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which such land is situate and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served upon him on or before the 1st day of April in the year in which such notice is served.

Enhancement of rent of tenant not having right of occupancy holding without, or after expiry, or cancellation of written engagement.

37. The notice of enhancement of rent under section 36, shall be served on the application of the landlord to the Court, through the Tahsildar or other officer authorized to serve such notices, and the landlord shall pay the costs of service. The notice shall be written in Hindi and in Urdu, it shall specify the rent demanded, and the fields on which enhancement is to take place, and it shall inform the tenant that if he means to sue to dispute the enhancement, he must institute his suit on or before the 15th day of May next after the service. Such notice shall, if practicable, be served personally on the tenant. If the notice cannot be served personally on the tenant, service may be made by affixing it at his usual place of residence, or if he have no such place of residence in the district in which the land is situate, at the village chowpal, or some other conspicuous place in the village in which the land is situate.

Service and contents of notice of enhancement.

38. Any tenant, on whom notice of enhancement has been served under Section 37 may contest his liability to pay the enhanced rent demanded of him by suit instituted on or before the 15th day of May next after the service or in answer to any suit proffered against him for recovery of arrears of the enhanced rent.

Notice of enhancement, how contested.

39. A tenant not having a right of occupancy may contest his liability to pay the enhanced rent demanded from him, on either of the following grounds:—

Grounds on which tenant not having a right of occupancy may contest notice.

First.—That he holds a lease or special agreement, or decree of court, under the terms of which he is not liable to such demand.

Second.—That notice of enhancement of rent has not been served upon him in the manner provided by Section 37.

40. It shall in no case be competent to the Court to enquire into the propriety of the rate of rent payable by a tenant not having a right of occupancy. The rent payable by such tenant shall be such amount as may be agreed upon between him and the landlord; or, if no such agreement has been made, such amount as was payable in the previous year; or, if notice of enhancement of rent has been served upon such tenant in the manner provided by Section 37, the amount stated in such notice, unless the tenant

Court not to enquire into propriety of rate of rent payable by tenant not having right of occupancy.

has successfully contested his liability to pay the enhanced rent in manner provided by Section 38.

CHAPTER V. EJECTMENT.

41. When an arrear of rent remains due from any tenant on the 15th day of May in any year after the passing of this Act, he shall be liable to be ejected from the land in respect of which the arrear is due.

42. No under-proprietor or tenant having a right of occupancy, or holding under an unexpired lease or special agreement, or decree of court, shall be ejected otherwise than in execution of a decree under the provisions of this Act.

43. No tenant, except a sub-lessor, shall in any case be ejected from the land in his occupancy, except between the 1st day of April and the 15th day of June in any year after the passing of this Act, unless while his rent is in arrear he has failed to cultivate the land which he holds from the landlord to whom the arrear is due.

44. No tenant not having a right of occupancy who holds or cultivates land without a written engagement, or under a written engagement not specifying the term of his holding, or whose holding has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which such land is situated and has not been renewed, shall be liable to be ejected therefrom unless a written notice shall have been served upon him on or before the first day of April in each year. The provisions contained in Section 37 as to the service, languages and contents of the notice in case of enhancement shall apply, *mutatis mutandis*, to notices served under this section.

45. Any tenant not having a right of occupancy, on whom a notice of ejectment shall have been served as last aforesaid may contest his liability to be ejected by suit instituted on or before the 15th day of May next after the service of such notice, or the land in his occupancy must be vacated on or before that date.

46. If no such suit be brought, and the landlord require the assistance of the Court to eject such tenant, he may, at any time before the 15th day of June next after such service, make application for such assistance, and if the Court be satisfied that notice of ejectment was duly served on the tenant it shall give such assistance accordingly.

47. A tenant not having a right of occupancy may contest his liability to be ejected from the land which he holds on any of the following grounds:—

First, that he holds a lease or special agreement or decree of Court under the terms of which he is not liable to such ejectment;

Second, that notice of ejectment has not been served upon him in manner provided by section 46; and,

Third, that he has a right of occupancy in the land from which his landlord seeks to eject him.

CHAPTER VI.

OF DISTRAINT FOR ARREARS OF RENT.

48. When an arrear of rent is due from any tenant, the landlord may distrain the produce of the land on account of which the arrear is due, subject to the rules contained in Section 49 and the following sections—

Provided, first, that when a tenant has given security for the payment of his rent, the produce of the land, for the rent of which security has been so given, shall not be liable to distraint;

Secondly, that no sharer in a joint estate, under-proprietary, or other tenure, in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate or tenure on behalf of all the sharers in the same;

And, thirdly, that, in pattidari estates, distraint shall be made only through the person under direct engagement for the payment of the Government land revenue, or where the rent of a pattidar is not collected by such person, through the pattidar who is entitled to collect the rent.

49. Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the preceding year for the land in respect of which the arrear is due, unless a written engagement for the payment of such excess has been executed by the tenant.

50. The power of distraint, vested by Section 48 in landlords, may be exercised by managers under the Court of Wards, managing agents, and tahsildars of estates held under khām management, and other persons lawfully entrusted with the charge of land and also by the agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by power of attorney in this behalf: Provided that, if any such agent purporting to act in the exercise of the said power, commits an illegal act, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

51. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered and deposited in any threshing floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

52. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served personally on the defaulter, or if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

53. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value equal to the amount of the arrear with the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or if he be absent, affix it at his usual place of residence.

54. Standing crops and other ungathered products of the earth may, notwithstanding the distraint, be reaped or gathered by the tenant, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the tenant neglect to do so, the distrainer may cause the said crops or products to be reaped or gathered, and, in such case, shall store the same either in such granaries or other places as aforesaid or in some other convenient place in the neighbourhood. In either case, the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose. If the crops or products do not from their nature admit of being stored, the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

55. If a distrainer shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a public officer, he may apply to the Court, and the Court may, if it think necessary, depute an officer to support the distrainer in making the distraint.

56. Any person, empowered to distrain property under Sections 48 or 50, may employ a servant or other person to make the distress; but in every such case he shall give to such servant or person a written authority for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

57. If at any time after property has been distrained as aforesaid the owner of the property shall tender payment of the arrear, and of the expenses of the distress, the distrainer shall receive the same, and give a discharge therefor, and shall forthwith withdraw the distress.

58. Within ten days from the time of making the distress, the distrainer shall institute a suit for the arrears due to him in the manner provided by this Act, and at the time of the institution of the suit shall apply to the Court, in the manner provided by Section 81 of the Code of Civil Procedure, that security be

taken from the defendant to fulfil any decree that may be passed against him in the suit, and on his failing to give such security, that the property so distrained shall be attached. Such application shall be disposed of by the Court according to the provisions of the Code of Civil Procedure. If the Court order security to be taken from the defendant, or that the distrained property be attached, the distress shall be withdrawn from the time at which the order of the Court shall be carried into effect.

59. If the person bringing a suit under section 58 shall fail to procure a decree, or the Court shall consider the distraint to have been vexatious or groundless, the Court may award compensation to the defendant, not exceeding twice the value of the property so distrained.

60. A person, whose property has been distrained in the manner hereinbefore provided, may institute a suit to contest the demand of the distrainer immediately after the distraint.

61. In all suits instituted to contest the demand of a distrainer, the defendant shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the

foregoing provisions of this Act. If the demand or any part thereof is found to be due, the Court shall give a decree for the amount in favour of the distrainer. If the distraint is adjudged to be vexatious or groundless, the Court, besides directing the release of the distrained property, may award such compensation to the plaintiff as it may think fit, not exceeding twice the value of the property distrained.

62. If any person shall claim, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit as a person whose property has been distrained for an arrear of rent alleged to be due from him, may institute a suit to contest the demand. When any such suit is instituted, the property may be released upon security being given to the satisfaction of the Court for the value of the same property. If the claim is dismissed, the Court shall make a decree in favour of the distrainer. If the claim is upheld, the Court shall order the release of the distrained property, and may award such damages as it may think fit, not exceeding twice the value of the property distrained.

63. No claim to any produce of land liable to distraint under this Act, which produce at the time of the distress may have been found in the possession of a defaulting tenant, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the landlord, nor shall any attachment in execution of a decree of any Civil Court prevail against such prior claim.

64. If in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person, before and up to the commencement of the suit, shall be enquired into, and the suit shall be decided according to the result of such inquiry.

65. If the distrainer shall not bring a suit under Section 58 within the time specified therein, the distress shall be considered null and void, and the property shall be released from distraint.

66. Crops or products, which from their nature do not admit of being stored, may be sold, cut or gathered, under the orders of the Court, at any time after attachment under Section 58.

67. Any person, whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, may institute a suit under this Act to recover compensation for the illegal distress of his property.

68. If any person, empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, shall distrain any property for the recovery of an arrear of rent alleged to be due otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged, or destroyed, by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit to recover compensation for any injury which he may have thereby sustained.

69. If any person, not empowered to distrain property under this Act, nor employed for the purpose under a written authority by a person so empowered, shall purport to distrain any property under this Act, the owner of such property may institute a suit to recover damages from such person for any injury which he may have sustained from the distraint. The person so distraining shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit.

70. If any person shall resist a distraint of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Court, upon complaint being made within ten days from the date of such resistance or removal, shall cause the person accused to be arrested and to be brought before the Court with all convenient speed, and the Court shall proceed forthwith to try the case. If the case

cannot be at once heard and determined, the Court may, if it think fit, require the party arrested to give security for his person, whenever the same may be required, and, in default of such security, may be committed to the civil jail until the case is tried. If the resistance or removal of property as aforesaid be proved, and if the offender be the owner of the property, the Court may order him to be imprisoned in the civil jail until the whole arrear due to the distrainer, with all expenses and costs, shall be paid, or shall be levied by distress and sale of the property of the offender under warrant of the Court: Provided that no such imprisonment shall continue for more than six months. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred Rupees, or, in default of payment thereof, to imprisonment in the civil jail for a period not exceeding two months.

CHAPTER VII.

OF THE JURISDICTION OF THE COURTS.

Suits cognizable.

71. The Courts of Revenue in Ondh shall take cognizance of the following descriptions of suits, and such suits shall be heard and determined in the said Courts in the manner provided in this Act, and not otherwise:—

A. Suits by a Landlord.

(1).—For the delivery by a tenant of the counterpart of a lease.

(2).—For arrears of rent.

(3).—For the enhancement of the rent of a tenant having a right of occupancy under Section 1.

(4).—For the ejectment of a tenant having a right of occupancy, or for cancelling any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract.

(5).—Suits by landlords against any agents employed by them in the management of land, or collection of revenue or rent, or against the sureties of such agents for money received or accounts kept by such agents in the course of such employment, or for papers in their possession.

B. Suits by an Under-proprietor or a Tenant.

(6).—For the delivery by a landlord of a lease.

(7).—For contesting a notice of enhancement of rent, or for contesting a notice of ejectment.

(8).—For compensation on account of the illegal exaction of rent, or of any unauthorized cess or impost, or on account of the refusal of receipts or acknowledgments for rent paid or tendered or on account of the extortion of rent by any means not authorized by this Act, or on account of illegal ejectment.

(9).—For the recovery of the occupancy of any land from which an under-proprietor or tenant has been illegally ejected by the landlord.

(10).—For contesting the exercise of the power of distraint conferred on landlords and others, by this Act, or any acts purporting to be done in exercise of the said power.

* Procedure in case of resistance of distraint.

(11.)—For abatement of rent in accordance with the provisions of Sections 16 and 17.

(12.)—For the recovery of compensation for improvements in accordance with the provisions of Section 22.

C. Suits regarding the division or appraisement of produce.

(13.)—Suits regarding the division, estimate, or appraisement of the produce of land under Section 31.

D. Suits by, and against, Co-sharers and Muftidars.

(14.)—Suits by co-sharers for their share of the profits of an estate, or any part thereof, after payment of the revenue and village-expenses, or for a settlement of accounts.

(15.)—Suits by any person under direct engagement for the payment of revenue, for arrears of revenue, payable through him by the co-sharers whom he represents, and for village-expenses and other dues for which the co-sharers may be responsible to him.

(16.)—Suits by co-sharers against persons under direct engagement for the payment of revenue, or by under-proprietors or lessees against muftidars or assignees of revenue, for compensation on account of the illegal exaction of revenue, or of any unauthorized cess or impost, or on account of the refusal of receipts or acknowledgments for revenue paid or tendered.

(17.)—Suits by muftidars or assignees of revenue for arrears of revenue due to them as such muftidars or assignees.

Grades of Courts.

72. For the purposes of this Act, the Grades of Courts for the purposes of this Act. Courts of Revenue shall consist of six grades of Courts, namely,—

(1.)—The Court of the Assistant Collector of the second class.

(2.)—The Court of the Assistant Collector of the first class.

(3.)—The Court of the Deputy Collector.

(4.)—The Court of the Collector.

(5.)—The Court of the Commissioner.

(6.)—The Court of the Financial Commissioner.

73. Subject to any orders that may from time to time be issued by the Governor General in Council, the Chief Commissioner may declare grades of Tahsildar or Assistant Commissioner shall belong, and to invest any Tahsildar with the powers of any of the same grades.

Deputy Commissioner to have Collector's powers.

75. Subject to any orders that may from time to time be issued by the Governor General of India in Council, the Chief Commissioner of Oudh may invest any officer employed in making or revising settlements of revenue with all or any of the powers of a Collector, or Deputy Collector, or Assistant Collector, under this Act.

76. The Court of the Assistant Collector of the second class shall have power to try and determine suits of the description mentioned in Clauses 1, 2, 6, 15, 16 and 17 of Section 71, of which the subject-matter shall not exceed one hundred Rupees in value or amount.

77. The Court of the Assistant Collector of the first class shall have power to try and determine suits of the descriptions referred to the last preceding section of which the subject-matter shall not exceed five hundred Rupees in value or amount.

78. The Court of the Deputy Collector shall have power to try and determine suits of every description of which the subject-matter shall not exceed five thousand Rupees in value or amount.

79. The Court of the Collector shall have power to try and determine suits of every description and of any amount, and to hear appeals from the original decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure as applied by this Act) from the orders of the Courts of the Assistant Collectors, and in the cases of the nature mentioned in Section 83 from such decisions and orders of the Deputy Collectors. Whenever the state of the public business requires it, it shall be competent to the Chief Commissioner to invest any Deputy Collector with the powers of a Collector under this Act, and, with the sanction of the Governor General in Council, to invest any Collector with all or any of the powers of a Commissioner under this Act.

80. The Court of the Commissioner shall have power to hear and determine appeals from the original decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Courts of the Collectors and Deputy Collectors, except as otherwise provided in Sections 79 and 83.

81. The Court of the Financial Commissioner shall have power to hear and determine appeals from the decisions in suits, and (where an appeal is allowed by the Code of Civil Procedure) from the orders of the Commissioners, and also applications for a special appeal, as provided in the said Code, from the decisions passed in regular appeal by the Collectors and by the Commissioners.

Appeals and Rehearing.

82. The memorandum of appeal prepared in the form and containing the particulars mentioned in the Code of Civil Procedure, shall be presented to the Court empowered to hear the appeal within the period hereafter specified, unless the appellant shall show sufficient cause to the satisfaction of such Court, for not having presented the memorandum within such period; that is to say, thirty days if the appeal lie to the Collector, six weeks if the appeal lie to the Commissioner, and ninety days if the appeal lie to the Financial Commissioner. The period shall be reckoned from and exclusive of the day on which the decision or order appealed against was passed, and also exclusive of such time as may be requisite

for obtaining a copy of the decree or order from which the appeal is made. Applications for special appeal shall be presented in the Court of the Financial Commissioner within the period hereinbefore fixed for appeals.

83. In suits under Clauses 2, 5, 8, 10, 13, 14, 15, 16 and 17 of Section 71 tried and decided by a Collector, if the amount sued for, does not exceed one hundred Rupees, the judgment of the Collector shall be final, except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a tenant, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in this Act.

84. In suits in which the judgment of the Collector is final, as provided in the last preceding section, the Collector may, upon the application of either party if preferred within thirty days from the date of decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial, or for any other good and sufficient reason.

Distribution of Business.

85. The Collector may direct the business in the Courts subordinate to him, whether or not they hold their sittings in the same place, to be distributed among such Courts in such way as he shall think fit.

Transfer of Suits and Appeals.

86. The Commissioner or the Collector may withdraw any suit, instituted in any Court subordinate to him, and try such suit himself, or refer it for trial to any other such subordinate Court competent to try the same. The Commissioner may also withdraw any appeal instituted in the Court of any Collector subordinate to him, and try the appeal himself, or refer it for trial to the Court of any other Collector in his Division.

87. The Financial Commissioner may order that any suit or appeal which shall be instituted in or presented to any Court subordinate to him, shall be transferred to any other such subordinate Court competent to try or hear subject-matter of the same.

Miscellaneous.

88. In the performance of their duties under this Act the Collectors shall be subject to the general control of the Commissioners and of the Financial Commissioner; and the Deputy Collectors and Assistant Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate: Provided that nothing in this section shall empower the Financial Commissioner or any Commissioner or Collector to interfere in any way not authorized by this Act with any decision or order in a suit.

89. A claim to eject a tenant or to cancel a lease, on account of non-payment of arrears of rent, may be joined in the same suit with a claim for such arrears; and the plaintiff may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrears.

90. All suits, which, under the provisions of this Act, may be brought by or against landlords, may be brought by or against managing agents or talukdars of estates held under khām management, whether such estates are the property of Government or not.

91. It shall be competent to the Courts to sit for the hearing and determining suits and appeals, and for disposing of other business under this Act, in any place within the limits of their local jurisdiction: Provided that every hearing and decision shall be in open Court and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

CHAPTER VIII.

LIMITATION OF SUITS.

92. Except as herein otherwise provided, all suits shall be instituted within one year from the date of the accruing of the cause of action.

93. Suits for the delivery of leases or the counterparts of leases may be instituted at any time during the tenancy of the plaintiff or defendant, as the case may be.

94. Suits for the recovery of arrears of rent or revenue, or share of profits, shall be instituted within three years from the date on which the arrear or share of profit claimed shall have become due.

95. Suits for the settlement of accounts shall be instituted within one year after the expiration of the year to which the accounts relate, or in the case of any claim for such settlement existing at the date of the passing of this Act, within one year from such date.

96. Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the continuance of the agency, or within one year after the determination of the agency, or, in the case of claims existing at the date of the passing of this Act, within one year after such date: Provided that, if the person having the right to sue shall, have been fraudulently kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency.

97. Any suit which may be instituted under Sections 67, 68 or 69, shall be commenced within three months from the date of the accruing of the cause of action.

Limitation of suits for compensation under Sections 67, 68, 69.

CHAPTER IX.

PROCEDURE.

98. Subject to the exceptions and provisos under which the Code of Civil Procedure was extended to Oudh, as contained in the declaration of the Governor General in Council, dated the 6th day of August 1861, and republished in Schedule C to this Act annexed, the provisions of the said Code shall, so far as they are applicable and not inconsistent with the provisions of this Act, apply to all suits, appeals, and proceedings here-under.

Civil Procedure Code to be the procedure under this Act.

99. In addition to the particulars required by Section 26 of the said Code to be specified in the plaint, the plaint shall contain the following particulars:—

Particulars to be added to plaint.

1st.—The name of the village or estate, and of the pargana in which the land to which the suit relates is situate.

2nd.—If the suit be for the recovery of an arrear of rent, or for the enhancement or abatement of rent, or for the ejectment of a tenant, or for contesting a notice of enhancement of rent, or for contesting a notice for the ejectment of a tenant, or for the recovery of the occupancy or possession of any land, the plaint shall specify the extent, situation, and designation of the land to which the suit relates, and, where fields have been marked in a Government survey, the number (if it be possible to give it) of each field.

3rd.—If the suit be for the recovery of an arrear of rent or revenue, the plaint shall specify the yearly rent or revenue of the land, the amount (if any) received on account of the year or years for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due.

100. In all suits under this Act the summons to the defendant shall be for the final disposal of the suit.

Summons to defendant to be for final disposal.

101. In any suit under this Act involving a claim to money, the defendant may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim of the plaintiff, together with the costs incurred by the plaintiff up to the time of such deposit. Notice of the deposit shall be given to the plaintiff, and the amount of the deposit shall be paid to the plaintiff on his application. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

102. Nothing in the last preceding section shall be held to bar the plaintiff, in any case in which the defendant shall deposit less than the amount claimed by the plaintiff, from proceeding in the suit for the recovery of the balance.

If defendant pay less than amount claimed, plaintiff may proceed.

103. The local enquiry described in Section 180 of the Code of Civil Procedure may also, if he think fit, be made by the Collector in person or other officer presiding in the Court, and the provisions contained in the said Code regarding local inquiries shall, so far as they are applicable, apply to such inquiries made by such Collector or other officer. In such cases the Collector or other officer as aforesaid, after completing the inquiry, shall record on the proceedings such observations as he shall think fit, and the observations so recorded shall be received in the suit.

Collector may make local enquiry.

104. When a decree is passed in any suit under this Act, the Court may, on the oral application of the party in whose favour the decree is passed, direct immediate execution thereof in the manner described in Section 13 of Act No. XXIII of 1861 (to amend Act VIII of 1859).

Immediate execution of decrees.

105. No process of execution shall be issued on a judgment under this Act after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred Rupees, in which case the period within which execution may be had shall be regulated by the general rules in force respecting the period allowed for the execution of decrees of the Civil Courts.

No execution to be issued three years after judgment, unless for sum exceeding Rs. 500.

106. If the decree be for the delivery of papers or accounts, the decree may be enforced by the imprisonment in the Civil Jail of the party against whom the decree is made, or by the attachment of his property, or by both imprisonment and attachment. The imprisonment and attachment may be continued until the party against whom the decree is made shall comply with the terms of it: Provided that no person shall be imprisoned under this section for a longer period than six months.

Enforcement of decree for delivery of papers or accounts.

107. Section 244 of the Code of Civil Procedure shall be read as if the word "Commissioner" were substituted for the word "Court."

Alteration of Section 244, Code of Civil Procedure.

108. If the decree be for an arrear of rent due in respect of an under-proprietary tenure, which is transferable by sale, the judgment-creditor may make application for the sale of the tenure; and the tenure may thereupon be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force. But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor so long as such warrant remains in force. If after sale of such tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor.

Sale of transferable tenures in execution of decrees for arrears of rent.

SCHEDULE A.*

I, A. B., of, &c., do solemnly declare[†] that I did personally (or by my Agent C. D.) on the day of

tender payment to E. F. at the place where the rent of the lands at held or cultivated by me under or from the said E. F., are usually payable), of the sum of Rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month, of both inclusive. I further declare that the said E. F. refused to accept the said sum so tendered (or to give me a receipt in full, forthwith, for the same). And I do declare that, to the best of my belief, the sum of Rupees so tendered, and which I now desire to pay into Court, is the full amount which I owe the said E. F. on account of the rent of the said lands from the month of to the month of both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands

SCHEDULE B.†

Court of the Collector.

of

Dated the day of 18 To E. F., of, &c.

With reference to the within declaration, you are hereby informed that the sum of Rupees therein mentioned, is now in deposit in this Court, and that the above sum will be paid to you or your duly authorized Agent, on application. And take notice that if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

SCHEDULE C.

Under the provisions of Section 385 of Act No. VIII of 1859, and Section 3 of Act No. IV of 1860, His Excellency the Governor General in Council is pleased to notify that, from 1st January 1862, Act VIII of 1859 is extended to the Province of Oudh, subject to the following exceptions and provisos:—

1. Section 3 shall be subject to the following proviso:—

Provided that the Judicial Commissioner or any other Court exercising any appellate jurisdiction within the Province of Oudh, may, at any time within one year from the time of the passing or execution of any judgment or order by any Court subordinate to the said Appellate Court, call for such judgment or proceedings without any regular appeal or application for review having been preferred against the same, and may, if he, or it, shall see sufficient grounds, revise and alter, or reverse or confirm the same. But that in such case, before revising, altering or reversing[‡] any one judgment or order, the said Judicial Commissioner,

or it, shall cause the same notice to be given to the party in whose favour the said judgment or order was pronounced, and the same opportunity to such party to be heard in support thereof, and the same proceedings to be taken as if a memorandum of appeal had been filed by the party aggrieved thereby.

2. Section 17 is excepted, and the term recognized agent is defined as follows, viz., a permanent servant, partner, relation, or friend, whom the Court may admit as a fit person to represent a party, and especially persons holding powers of attorney from absent parties, persons carrying on business on behalf of bankers and traders, managing agents of landholders, nearest male relations of women, and persons *ex-officio* authorized to act for Government, or for any Prince or Chief.

3. Section 111 shall be subject to the following limitation:—It shall not be obligatory on the Court to decide *ex parte* in the absence of defendant, but the Court may proceed to compel his attendance under the following rule, being the rule now in force in Oudh:—

Rule.—If the defendant does not appear, it shall be at the discretion of the Court to issue a warrant to arrest him and detain him till another day appointed for the hearing of the case, and to attach his property.

4. Section 172 So much of this section as requires that the whole of the evidence shall be taken down in writing in the language in ordinary use is excepted, and the record made by the hand of the Judge, under the following rule, being the rule now in force in Oudh, shall be taken as a record of the evidence:—

Rule.—An intelligible note of the essential points of the evidence of each witness is to be taken at the time and in the course of oral examination by the Officer who tries the case, in his own language. The notes must be legible, complete, and properly arranged, must attest the presence of the witness at the time, and mark every postponement and change of time and scene, so that their *bond fide* character may be apparent. Every essential point must be noted, but mere surplusage may be omitted. These notes shall be filed and shall form part of the record of the case: Provided that in cases tried by a European Officer, who has not passed the examination in the Native languages prescribed for Assistant Commissioners exercising special powers, the evidence of witnesses shall also be recorded, at length, in their own language.

Section 205. So much of this section as renders land liable to sale in execution of a decree, will be subject to the restrictions on the sale of land prescribed by the following rule, being the local rule now in force in Oudh:—

Rule.—No ancestral property in land shall be sold in satisfaction of a decree, without the sanction of the Judicial Commissioner; and before acquired property in land shall be so sold, the permission of the Divisional Commissioner shall be obtained.

STATEMENT OF OBJECTS AND REASONS.

In August 1866 certain arrangements were sanctioned by the Government of India for the settlement of the questions which had long been pending regarding rights of occupancy in Oudh. The nature of those arrangements is described in the correspondence between the Government of

* If this declaration is made by an Agent, it must be altered accordingly.

† This is to be by endorsement on a copy of the Declaration under Schedule A, made by the person paying the money into Court.

India and the Chief Commissioner of Oudh, published in the Supplement to the *Gazette of India* of the 1st September 1866. Those arrangements involved the necessity, on the part of the Government, of cancelling all orders, rules, and circulars which were in force in Oudh, recognizing a right of occupancy in non-proprietary cultivators, and the revision of the rules regarding the hearing of suits in the Summary Courts. The Talukdars of Oudh at the same time consented that certain privileges should be granted to certain classes of tenants. Legislation is necessary to carry into effect the engagements thus entered into by the Government, and to confirm the concessions made by the Talukdars. It appears desirable to take this opportunity of placing on a better footing the whole of the law regarding the recovery of rent in Oudh. Much difficulty has been experienced in determining what laws are actually in force in respect of the jurisdiction of the Revenue Summary Courts, and there has consequently been a great want of uniformity in the procedure that has been followed. This has been found to be a serious evil. The practice of the Summary Courts has been loose, uncertain, and dilatory.

Legislation is desirable for another reason. Although the Courts would probably maintain the validity of the rights of occupancy and other privileges which the Talukdars have consented to grant to certain classes of tenants in their estates, it is doubtful whether similar protection would be afforded to the same classes of tenants in estates not belonging to Talukdars.

It is desirable that the procedure of the Revenue Courts in Oudh should correspond with that followed in the neighbouring provinces, so far as this is practicable without injury to any special interests. Those portions of Act X of 1859, and of Act XIV of 1863, which appear applicable to Oudh, have therefore been incorporated in the present Bill.

It is proposed that, with a few modifications and additions, the Code of Civil Procedure shall apply to suits and proceedings under this Act. This is the more desirable since in Oudh the same officers preside over the Civil and Revenue Courts.

Sections 4, 32, 33, 34 and 35, and Sections 22 to 27 of the Bill are intended to confirm the agreements entered into by the Talukdars in respect of rights of occupancy and other privileges to be enjoyed by certain classes of tenants. The provisions of these sections are not in all respects identical with those contained in the rules to which the Talukdars originally gave their consent. Although the more important of the alterations that have been made, have been already approved by the Talukdars, it will be right, before this portion of the Bill receives the sanction of the Legislature, that a reference regarding it be made to the Talukdars through the Chief Commissioner of Oudh.

* Many of the other provisions of the proposed law are of great importance, but it does not appear necessary to notice them in this statement of the general reasons which have led to the introduction of the Bill.

SIMLA,
The 15th June 1867.

JOHN STRACHEY.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st July 1867, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 20 of 1867.

A Bill to enable appeals to be transferred from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that Province, and for other purposes.

WHEREAS it is expedient to enable appeals to be transferred from time to time from the Court of the Financial Commissioner of Oudh to the Court of the Judicial Commissioner of that Province; and whereas it is also expedient to provide for the decision of certain questions arising before either of such Commissioners by a Court composed of both of them; It is hereby enacted as follows:—

I.—Transfer of cases by Financial Commissioner.

1. Whenever the state of business in the Court of the Financial Commissioner of Oudh is such that he cannot dispose of the same with reasonable despatch, he may cause a list of the appeals, whether regular or special, which he may wish to transfer for decision to the Court of the Judicial Commissioner of Oudh, to be prepared and sent to the Chief Commissioner of Oudh, and such Chief Commissioner may, if he think fit, order all or any of such appeals to be transferred accordingly.

2. In all appeals so transferred, the said Judicial Commissioner shall proceed as if they had been originally presented in his Court; and his orders thereon shall have the same effect to all intents and purposes as if they had been made by the said Financial Commissioner.

II.—Appeals before Financial and Judicial Commissioners.

Reference to High Court.

3. Whenever any appeal, whether regular or special, shall come before the said Financial Commissioner or the said Judicial Commissioner, if the Commissioner before whom such appeal shall have come shall think it desirable to obtain the opinion of the other Commissioner on any question of fact or of law arising on such appeal, he may record a memorandum to that effect, and on receipt of a copy of such memorandum, the other Commissioner shall be bound to sit, as soon as may be practicable, with the Commissioner recording the memorandum, in the Court of such Commissioner, and to assist in disposing of the said question, subject to the provisions hereinafter contained.

4. In case there shall be a difference of opinion between the two Commissioners, the following course shall be pursued (that is to say):—

(1).—If the difference of opinion shall be on any question of fact in the finding of the Lower Court, the finding shall be upheld;

(2.)—If the difference of opinion shall be on a point of law or of usage having the force of law, the ruling of the Lower Court shall, in such case also, be upheld, unless one of the Commissioners shall be of opinion that the point should be referred to the High Court of Judicature of the North-Western Provinces of the Presidency of Bengal, in which case the Commissioners shall state the point as to which they differ, and forward the statement with their respective opinions thereon to such High Court.

5. The Commissioners may proceed in the case notwithstanding such reference, and may pass a decree contingent on the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall have been made until the receipt of the order of the High Court.

6. Cases referred under this Act for the opinion of the High Court, shall be heard by three Judges of that Court, and shall be determined according to the opinion of the majority of such Judges.

7. The parties to such cases may appear, plead and act in the said High Court in person or by an Advocate or Vakil of such High Court; and the High Court, when it shall have heard and considered the case, shall transmit a copy of its opinion, under the seal of the Court and the signature of the proper officer, to the Commissioners making the reference.

8. Costs, if any, consequent on such reference, shall be costs in the suit.

III.—Points arising in Criminal Cases.

Provision for decision of points arising in criminal cases before Judicial Commissioner.

9. When any appeal shall have been presented to the said Judicial Commissioner under the Code of Criminal Procedure;

or when any sentence of death shall have been referred to him for confirmation;

if he shall think it desirable to obtain the opinion of the said Financial Commissioner on any question of fact or of law arising on such appeal, or on such reference,

the provisions contained in Sections 3, 4, 5, 6, and 7 of this Act shall, *mutatis mutandis*, apply;

Provided that if there be a difference of opinion on any question of fact, the case may, but if the difference involve the confirmation, commutation or reversal of a sentence of death or of transportation or of imprisonment, the case shall, be referred in manner aforesaid to the said High Court.

STATEMENT OF OBJECTS AND REASONS.

The Court of the Financial Commissioner of Oudh is, under Act XVI of 1865, the final Court of Appeal in all suits involving any right in land in Oudh. In consequence of the progress of the Settlement of the Land Revenue, the Financial Commissioner is frequently overwhelmed with appellate business, much of which might, without any objection, be disposed of by the Judicial Commissioner, whose work is usually far less heavy.

This would often greatly facilitate the despatch of business, and would give important relief to suitors. The Bill therefore proposes to give the means of transferring appeals for final decision from the Court of the Financial Commissioner to the Court of the Judicial Commissioner.

It is also proposed to give to the Financial and Judicial Commissioners the power of sitting together for the hearing of revenue, civil and criminal cases of special difficulty and importance. If there should be a difference of opinion between the Judges, the Bill provides that a reference may be made to the High Court of the North-Western Provinces. In this respect it is proposed to follow a course similar to that prescribed by Act IV of 1866 (the Panjáb Chief Court Act), for cases in which there is a difference of opinion between two of the Judges of the Chief Court of the Panjáb.

SIMLA,
The 23rd July 1867.

J. STRACHEY.

WHITLEY STOKES,

Asstt. Secy. to the Govt. of India,
Home Department (Legislative).

HOME DEPARTMENT.

NOTIFICATIONS.

Simla, the 26th July 1867.

No. 2795.

The undermentioned Covenanted Civil Servants, having produced the necessary medical certificate, have been granted by the Right Hon'ble the Secretary of State for India extensions of leave for the periods specified:—

Mr. W. J. Bramly	...	6 months.
The Hon'ble E. Jackson	...	4 ditto.
Mr. F. B. Peacock	...	5 ditto.

The 27th July 1867.

No. 2826.

W. H. Clarke, Esq., LL.D., Recorder of Rangoon, has been granted leave of absence to Europe on medical certificate for fifteen months, with effect from the 27th instant.

Dr. Clarke has also been allowed eleven days' preparatory leave to reach Madras, with effect from the 16th instant.

No. 2826A.

Mr. L. P. D. Broughton, Barrister-at-Law, is appointed to officiate as Recorder of Rangoon during the absence on leave of Dr. Clarke, or until further orders.

The 30th July 1867.

No. 2849.

In consequence of the promotion of Major R. Murray, R.E., Deputy Director General, to officiate as Director General of Telegraphs in India, during the absence of Lieutenant-Colonel D. G. Robinson,

the Governor General in Council is pleased to direct the following promotions:—

Captain H. Mallock, R. A., Superintendent and Store-keeper, to officiate as Deputy Director General of Telegraphs in India.

Lieutenant W. Shepherd, R. E., Assistant Superintendent and Assistant Store-keeper, to officiate as Superintendent and Store-keeper.

No. 2853.

Doctor O'C. Raye, Civil Surgeon of Nimar in the Central Provinces, is invested with the powers of a subordinate Magistrate of the 1st Class, described in Section 22 of Act XXV. of 1861, to be exercised within the precincts of the Jail at Khundwah.

No. 2855.

Yenket Rao Deshmook, Manager of the Aherce Zemindaree in the Chanda District in the Central Provinces, is invested with the powers of a subordinate Magistrate of the 2nd Class, described in Section 22 of Act XXV. of 1861, to be exercised within the limits of the said Zemindaree.

No. 2857.

The Hon'ble Dwarkanath Mitter took his seat on the forenoon of the 16th instant, as an Officiating Judge of the High Court of Judicature at Fort William in Bengal.

No. 2859.

Lieutenant J. R. Marett, while officiating as Assistant Commissioner, 3rd Grade, in Oudh, is invested with the powers of a subordinate Magistrate of the 2nd Class, described in Section 22 of Act XXV. of 1861.

No. 2879.

Leave of absence on private affairs for fourteen days is granted to Dr. W. White, Civil Surgeon of Akyab in British Burmah, from the date on which he may avail himself of the same.

No. 2881.

APPOINTMENT.—Mr. V. Bull to act as Curator of the Geological Museum, in addition to his own duties, during the absence on leave of Mr. A. Tween, or until further orders.

The 31st July 1867.

No. 2947.

The Governor General in Council is pleased to permit Mr. J. P. H. Ward to resign the Civil Service from the 5th of April last.

The 2nd August 1867.

No. 2968.

Lieutenant C. C. Saxton, of the Royal (Madras) Artillery, is appointed a Probationary Assistant in the Topographical Branch of the Survey Department.

No. 2970.

Captain J. P. Basevi, R. E., and Mr. J. B. N. Hennessey, Surveyors of the 2nd Grade in the Great Trigonometrical Survey of India, are promoted to the 1st Grade, to fill existing vacancies, from the 1st instant.

No. 2972.

Erratum.—With reference to the Notification of this Department, No. 305, dated the 16th of May, it is hereby notified that Mr. E. J. Boldero resigned the Civil Service from the 16th of April.

No. 2975.

Mr. J. Lloyd, Extra Assistant Commissioner of Chindwarrah in the Central Provinces, is invested with the powers of a subordinate Magistrate of the 2nd Class, described in Section 22 of Act XXV. of 1861.

E. C. BAYLEY,

Secy. to the Govt. of India.

FOREIGN DEPARTMENT.

NOTIFICATIONS.

General.

Simla, the 29th July 1867.

No. 1272.

Lieutenant G. H. Trevor, Inspector of Schools in the Central Provinces, has been appointed an Officiating Assistant Commissioner, 3rd Class, in the Central Provinces.

Lieutenant Trevor will officiate as Assistant Secretary to the Chief Commissioner during the absence on leave of Lieutenant Bloomfield.

No. 1275.

LEAVE.—With reference to G. O. No. 540, dated 16th March last, an extension of privilege leave to the 15th instant is granted to Lieutenant-Colonel R. J. Meade, C. S. I., Agent to the Governor General for Central India.

No. 1277.

PROMOTION.—The following promotions in the Central Provinces' Commission, consequent on the death of Major C. Baldwin, Deputy Commissioner, 4th Class, are sanctioned by the Governor General in Council with effect from the 22nd May last:—

Lieutenant M. P. Ricketts, Assistant Commissioner, 1st Class, to be Deputy Commissioner, 4th Class.

Lieutenant H. C. E. Ward, Assistant Commissioner, 2nd Class, to be Assistant Commissioner, 1st Class.

Lieutenant J. Ducat, Assistant Settlement Officer, to be Assistant Commissioner, 2nd Class.

The 31st July 1867.

No. 1287.

LEAVE.—Lieutenant E. W. C. H. Miller, Assistant Commissioner of Nagpore, has been granted leave of absence on private affairs from the 2nd to the 23rd January 1867.

No. 1289.

Under the provisions of Section 19 of Act XII. of 1866 (*An Act for the taking of rights to form and maintain private water-courses from public works of irrigation*), His Excellency the Viceroy and Governor General in Council is pleased to extend the said Act to the Province of Oudh.

No. 1293.

LEAVE.—Privilege leave for three months is granted to Mr. P. Carnegie, Officiating Commissioner of the Fyzabad Division in Oudh.

No. 1300.

The undermentioned Officers of the Hyderabad Commission have passed the prescribed examinations:—

Departmental Test (Higher Standard).

Captain A. Farrer, Assistant Commissioner, 3rd Class.

Mr. J. H. Burns, Extra Assistant Commissioner, 3rd Class.

Vernacular (Lower Standard).

Lieutenant H. Szezepanski, Assistant Commissioner, 1st Class.

Vernacular (Higher Standard).

Captain J. FitzGerald, Assistant Commissioner, 2nd Class.

W. Murr,

Foreign Secretary.

STAR OF INDIA.

NOTIFICATION.

Simla, the 31st July 1867.

No. 82.

The following extract from the *London Gazette* dated 24th May 1867, containing certain nominations to the Most Exalted Order of the Star of India, is re-published by order of the Viceroy and Governor General of India, Grand Master of the Order:—

INDIA OFFICE;

The 24th May 1867.

"The Queen has been graciously pleased to nominate and appoint His Highness Krishnah Raj Wadyar, Maharajah of Mysore, to be a Knight Grand Commander of the Most Exalted Order of the Star of India; and Her Majesty has also been pleased to nominate and appoint,—

"His Highness the Maharajah Sree Jowan Singjee, Chief of Edur,

"Daniel Elliott, Esq., Madras Civil Service (retired), late Member of the Law Commission, of the Legislative Council of India, and of the Council of the Governor of Madras,

"George Frederick Harvey, Esq., Bengal Civil Service (retired), late Commissioner of Agra,

"Major-General William Hill, late Madras Army, Commanding the Nizam's Contingent during the the mutinies of 1857-58,

"Major-General Vincent Eyre, C. B., Royal (late Bengal) Artillery,

"The Rajah Jodhbir Chund of Nadown,

"Henry Lacon Anderson, Esq., Bombay Civil Service (retired), late Chief Secretary to the Government of Bombay, and Member of the Council of the Governor General of India for making Laws and Regulations,

"Richard Temple, Esq., C. S. I., Bengal Civil Service, Resident at Hyderabad, and

"Colonel Arthur Purves Phayre, C. B., Bengal Staff Corps, Chief Commissioner in British Burmah, to be Knights Commanders of the said Most Exalted Order."

By Order of the Grand Master,

W. Murr,

*Secy. of the Most Exalted Order
of the Star of India.*

FINANCIAL DEPARTMENT.

NOTIFICATIONS.

Simla, the 29th July 1867.

No. 1728.

Under instructions from the Right Hon'ble the Secretary of State for India, the Governor General in Council is pleased to notify that the periods of service which qualify for privilege leave in the Civil Departments must be periods of continuous duty, and that this principle has not been set aside by the new rules for the grant of leave of absence to Members of the Civil Service, which were sanctioned in the Despatch from the Secretary of State, No. 263, dated 7th November 1864.

The 1st August 1867.

No. 1778.

Mr. J. Christie's appointment as Assistant Commissioner of Paper Currency in Bombay, is cancelled, and he is appointed Supernumerary Assistant Accountant General, Bombay.

No. 1779.

Mr. R. A. Fink made over charge of the Office of Deputy Accountant General, Punjab, to Mr. J. C. Gilliland; and Mr. Gilliland made over charge of his duties as an Officer of the 5th Class of the Financial Department in the Office of the Accountant General, Punjab, to Mr. C. C. Seymour, on the 26th ultimo afternoon.

The 2nd August 1867.

No. 1807.

Mr. G. Bagley, an Assistant of the 5th Class of the Financial Department, attached to the Office of the Accountant General, North-Western Provinces, is allowed privilege leave for one month.

No. 1808.

The following Statement of the Silver received and coined in the Mints of Calcutta, Madras and Bombay, in June 1867, is published for general information :—

	CALCUTTA.			MADRAS.			BOMBAY.		
	Bullion or Coin received during the month, valued in Rupees.		Coined and examined during the month, valued in Rupees.	Bullion or Coin received during the month, valued in Rupees.		Coined and examined during the month, valued in Rupees.	Bullion or Coin received during the month, valued in Rupees.		Coined and examined during the month, valued in Rupees.
	Govt.	Merchants.		Govt.	Merchants.		Govt.	Merchants.	
1867.									
In June ...	138	23,67,676	16,15,650	8	33,192	87,605	30,856	61,67,447	32,99,047

Published by Order of the Governor General in Council,

E. H. LUSHINGTON,
Secy. to the Govt. of India.

MILITARY DEPARTMENT.

Simla, the 20th July 1867.

No. 756 of 1867.—The following promotions are made, subject to Her Majesty's approval :—

Corps.	Rank and Names.	To what rank promoted.	From what date.	In whose room.
Cadre of the late 3rd B. L. C.	Lieutenant Charles Elliot Farquharson (21st Hussars).	Captain ...	29th June 1867	Captain C. W. Thomas (21st Hussars), deceased.
Cadre of the late 1st E. B. F.	Lieutenant (Captain in 101st Foot) Thomas Adair Butler, v. c.	Captain ...	17th April 1867	Captain L. B. Maginnis (101st Foot), retired.

No. 757 of 1867.—The following promotions are made in the undermentioned Corps of the Native Army :—

Corps.	Rank and Names.	To what rank promoted.	From what date.	In whose room.
1st Bengal Cavalry	Kote Duffadar Muhobut Ullee	Jemadar ...	30th Nov. 1866	Shaikh Boorhan Ullee, deceased.
8th Regiment, N. I.	Jemadar Adjoodiah Tewary	Subadar ...	1st May 1867	Bhag Sing, invalided.
	Havildar Bunnah Khan	Jemadar ...	Ditto	Adjoodiah Tewary, promoted.
14th (The Perozepore) Regiment, N. I.	Ditto Khuzan Singh	Ditto ...	Ditto	Khuzan Singh, invalided.
	Ditto Subail Singh	Ditto ...	Ditto	Jeymul, invalided.
24th (Punjab) Regiment, N. I.	Jemadar Pulwan Khan	Subadar ...	30th April 1867	Jollaloodcen, invalided.
	Havildar Spoltan Sing	Jemadar ...	Ditto	Pulwan Khan, promoted.

No. 758 of 1867.—The undermentioned Officer of the Bengal Staff Corps, having completed twenty-six years' service, is promoted to the rank of Lieutenant-Colonel, from the date specified, under the provisions of G. G. O. No. 808 of the 26th September 1866, subject to Her Majesty's approval:—

Major John Anstruther Angus, 15th July 1867.

No. 759 of 1867.—The undermentioned Officer of the Bengal Staff Corps, having completed twenty years' service, is promoted to the rank of Major, from the date specified, under the provisions of G. G. O. No. 808 of the 26th September 1866, subject to Her Majesty's approval:—

Captain Henry Brabazon Urmston, 20th July 1867.

No. 760 of 1867.—The following promotion is made from the date specified, under the operation of G. G. O. No. 632 of the 4th August 1864, paragraph 69, subject to Her Majesty's approval:—

BREVET.

To be Captain.

Lieutenant Harry Style Ruxton, } 20th July 1867.
late 56th N. I. ... }

No. 761 of 1867.—The undermentioned Officer of the Medical Department, having completed twenty years' service, is promoted to the rank of Surgeon Major, from the date specified, under the provisions of G. G. O. No. 507 of the 20th June 1864, subject to Her Majesty's approval:—

Surgeon Haldane Stewart, 22nd July 1867.

No. 762 of 1867.—The undermentioned Non-Commissioned Officers of the Unattached List, are promoted to the rank of Sub-Conductor from this date:—

Serjeant Benjamin Revell, attached to the Barrack Department.

Serjeant William Willson, attached to the Office of the Adjutant General.

The 30th July 1867.

No. 763 of 1867.—The following paragraphs of a Military letter from the Right Hon'ble the Secretary of State for India, No. 181, dated 20th June 1867, are published for general information:—

PARA. 1.—The undermentioned Officers have been permitted to return to their duty, viz.:—

Lieutenant-Colonel A. Fraser, C. B.

Major W. C. R. Mylne.

„ A. H. Paterson.

„ B. H. M. Aitken.

Captain W. C. B. Ryan.

Lieutenant A. D. C. Inglis.

„ C. W. G. Perreau.

„ R. Atkins.

„ R. H. Inglis.

„ J. W. A. Michell.

Deputy Inspector General G. S. Cardew.

Surgeon-Major C. Archer.

Surgeon R. Bird.

Assistant Surgeon T. Briacoe.

Veterinary Surgeon M. J. Marshall.

2. The undermentioned Officers and Warrant Officer have been granted extensions of leave for the periods specified, viz.:—

Lieutenant-Colonel R. Ouseley ... Four months.

Major T. A. Corbett ... Six months.

„ G. H. Gordon ... Ditto.

„ D. Briggs ... Ditto.

„ H. W. H. Coxe ... Ditto.

„ G. A. F. Houchen ... Ditto.

Captain G. F. M. Phillips ... Ditto.

„ W. Hichens ... Ditto.

„ J. A. M. Patton ... Ditto.

„ F. H. Conolly ... Ditto.

„ A. Waterfield ... Ditto.

Lieutenant C. F. Battye ... Ditto.

„ W. V. F. Jacob ... Ditto.

„ J. S. Melville ... Ditto.

„ C. H. Palmer ... Four months.

„ R. W. Napier ... Six months.

„ H. G. Becher ... Ditto.

„ T. T. Oliphant ... Ditto.

„ T. D. Madden ... Two months.

„ W. Campbell ... Four months.

„ W. A. S. de V. Beau-

clerk ... Six months.

„ R. E. Boyle ... Four months.

„ A. Andrew ... Six months.

Surgeon-Major J. K. Walter ... Ditto.

Assistant Surgeon A. F. Richmond ... Five months.

Assistant Surgeon D. Hood ... Six months.

Hospital Steward T. A. Earle ... Four months.

3. The undermentioned Officers have been permitted to retire from the service from the dates specified, viz.:—

Major S. R. J. Owen, from the 22nd August 1866.

Surgeon-Major E. Goodeve, from the 13th October 1866.

No. 764 of 1867.—His Excellency the Governor General in Council is pleased to make the following appointment:—

Captain (Brevet Major) H. E. Jerome, v. c., of Her Majesty's 19th Foot, Brigade Major, Jullundur, to be Assistant Adjutant General of Division, in succession to Colonel C. A. Barwell, whose tenure of appointment has expired.

The 31st July 1867.

No. 765 of 1867.—The undermentioned Officer has reported his return from England:—

Assistant Surgeon R. Bird, M.D., }
of the Medical Department, } 11th July 1867.
Civil, Howrah ... }

*Date of arrival
at Fort William.*

No. 766 of 1867.—Captain George Baillie, of the Invalid Battalion, is allowed leave of absence from the 20th February to the 14th March 1867 to visit Bombay, preparatory to proceeding on leave of absence on medical certificate to Europe.

No. 767 of 1867.—The undermentioned Officer is permitted to proceed to Europe on leave of absence on sick certificate :—

Major Walter Key-Haslewood, } For twenty
of the Invalid Establishment } months, under
the old Regu-
lations.

No. 768 of 1867.—The following paragraph of a Military letter from the Right Hon'ble the Secretary of State for India, No. 154, dated 7th June 1867, is published for general information :—

8. Lieutenant W. J. Cochran, 68th Bengal Native Infantry, has been allowed to retire from the 1st October 1864.

No. 769 of 1867.—The undermentioned Officer of the Bengal Staff Corps, having completed twenty-

six years' service, is promoted to the rank of Lieutenant-Colonel from the date specified, under the provisions of G. G. O. No. 808 of the 26th September 1866, subject to Her Majesty's approval :—

Major John Smith, 29th July 1867.

No. 770 of 1867.—The undermentioned Officers of the Bengal Staff Corps, having completed twenty years' service, are promoted to the rank of Major from the dates specified, under the provisions of G. G. O. No. 808 of the 26th September 1866, subject to Her Majesty's approval :—

Captain (Brevet Major) Frederick William Graham ... } 26th July 1867.

Captain (Brevet Major) William Turton Fagan ... } 28th July 1867.

No. 771 of 1867.—The undermentioned Officer of the Bengal Staff Corps, having completed twelve years' service, is promoted to the rank of Captain from the date specified, under the provisions of G. G. O. No. 808 of the 26th September 1866, subject to Her Majesty's approval :—

Lieutenant Reginald Colvil } 25th July 1867.
William Mitford ... }

The 1st August 1867.

No. 772 of 1867.—The undermentioned men declared unfit for further service by Annual Invaliding Committees are transferred to the Pension Establishment :—

Rank.	Names.	In what rank pensioned.	Circle of payment.
<i>C. 19th Royal Artillery.</i>			
Syca ...	Juggan ...	Syca ...	Lucknow.
Ditto ...	Bhuggoo ...	Ditto ...	Ditto.
Ditto ...	Bhowany Deen (1) ...	Ditto ...	Ditto.
Grass-Cutter ...	Sookale ...	Grass-Cutter ...	Ditto.
Ditto ...	Ramdeen ...	Ditto ...	Ditto.
Ditto ...	Dussoo ...	Ditto ...	Ditto.
Ditto ...	Mattadeen ...	Ditto ...	Ditto.
Ditto ...	Bhoorah ...	Ditto ...	Delhi.
Ditto ...	Bhoolah ...	Ditto ...	Lucknow.
Bullock-Driver ...	Seetal ...	Bullock-Driver ...	Cawnpore.
<i>18th Bengal Cavalry.</i>			
Sowar ...	Sabut Khan ...	Sowar ...	Cawnpore.
<i>17th Native Infantry.</i>			
Subadar ...	Kassie Sookul ...	Subadar ...	Cawnpore.
Jemadar ...	Rampersad Puttuck ...	Jemadar ...	Ditto.
Ditto ...	Munbode Pandey ...	Ditto ...	Dinapore.
Havildar ...	Sahibzadah ...	Havildar ...	Ditto.
Ditto ...	Shaick Hookum ...	Ditto ...	Ditto.
Ditto ...	Shaick Cheetoo ...	Ditto ...	Cawnpore.
Ditto ...	Adjoodeah Misser ...	Ditto ...	Ditto.
Naick ...	Teekah ...	Naick ...	Ditto.
Ditto ...	Ramdial Opudeah ...	Ditto ...	Ditto.
Ditto ...	Ungud Sing ...	Ditto ...	Ditto.
Ditto ...	Hursahaie Sing ...	Ditto ...	Dinapore.
Sepoy ...	Emam Khan ...	Sepoy ...	Cawnpore.
Ditto ...	Prang Ojah ...	Ditto ...	Dinapore.
Ditto ...	Jehanjeer Khan ...	Ditto ...	Cawnpore.

Rank.		Names.		In what rank pensioned.	Circle of payment.
<i>5th Goorkah Regiment.</i>					
Jemadar	...	Cheemoo	...	Jemadar	Meerut.
Havildar	...	Roop Sing	...	Havildar	Ditto.
Ditto	...	Faiz Khan	...	Ditto	Ditto.
Ditto	...	Beejairam	...	Ditto	Ditto.
Ditto	...	Jummon Sing	...	Ditto	Ditto.
Naick	...	Kishna Kuttuck	...	Naick	Ditto.
Ditto	...	Hastbeer	...	Ditto	Ditto.
Sepoy	...	Jyeehund	...	Sepoy	Ditto.
Ditto	...	Dhumnoo	...	Ditto	Ditto.
Ditto	...	Rameo	...	Ditto	Ditto.
Ditto	...	Kissendeo	...	Ditto	Ditto.
Native Doctor, 3rd Class		Bakur Butt	...	Native Doctor, 3rd Class	Ditto.
Ditto 2nd Class		Gulaam Mahomed Khan	...	Ditto 2nd Class	Loodiana.
<i>1st Regt., Central India Horse.</i>					
Duffadar	...	Ram Sing	...	Duffadar	Meerut.
<i>2nd Regt., Central India Horse.</i>					
Nishanburdar	...	Mahomed Azim Khan	...	Nishanburdar	Meerut.
Sowar	...	Meg Sing	...	Sowar	Ditto.

No. 773 of 1867.—The undermentioned Officer is appointed a Brigade Major to complete the Establishment, in succession to Captain (Brevet Major) H. E. Jerome, v. c., appointed Assistant Adjutant General of Division :—

To be Brigade Major.

Captain B. S. B. Parlbv, of the Bengal Staff Corps, Fort Adjutant, Fort William.

The 2nd August 1867.

No. 774 of 1867.—The undermentioned Officers are admitted to the Bengal Staff Corps with effect from the dates specified opposite to their names, subject to the confirmation of the Right Hon'ble the Secretary of State for India :—

Lieutenant Arthur George Hammond, of the General List, Infantry,	} 10th June 1867.
Wing Officer, Corps of Guides	
Lieutenant Charles Edward Hunter, of the General List, Infantry, Wing	} 24th April 1868.
Subaltern, Corps of Guides	
Ensign Legh Richmond Battye, of Her Majesty's 35th Foot, 1st Wing	} 24th April 1868.
Subaltern, 5th Goorkha Regiment (The Hazara Goorkha Battalion)	

No. 775 of 1867.—Ensign L. R. Battye, of Her Majesty's 35th foot, 1st Wing Subaltern, 5th Goorkha Regiment (The Hazara Goorkha Battalion), admitted to the Bengal Staff Corps by G. G. O. No. 774 of 2nd August 1867, will rank as Lieutenant in that Corps, under the operation of paragraph 84 of G. G. O. No. 332 of 1861, with effect from the 24th April 1866, subject to Her Majesty's approval.

H. W. NORMAN, Col.,

Secy. to the Govt. of India.

PUBLIC WORKS DEPARTMENT.

NOTIFICATIONS.

Establishment.

Simla, the 29th July 1867.

No. 201.

Lieutenant-Colonel F. H. Rundall, R. E., is appointed Chief Engineer of Irrigation Works and Joint Secretary to the Government of Bengal in the Public Works Department, with the rank of Chief Engineer, 2nd Class. This appointment is subject to the approval by Her Majesty's Government of the creation of the post.

The 1st August 1867.

No. 202.

The services of Lieutenant E. M. Larminie, R. E., Assistant Engineer, 2nd Grade, Punjab, are placed at the disposal of the Home Department.

No. 203.

Lieutenant G. H. L. Pole, R. E., Assistant Engineer, 1st Grade, Mysore, is promoted to the rank of Executive Engineer, 4th Grade, with effect from the 14th March 1867, to fill an existing vacancy.

The 2nd August 1867.

No. 204.

Baboo Thakoor Doss has been appointed an Accountant of the 4th Grade and posted to Rajpootana, with effect from the 1st October 1865.

No. 205.

Mr. T. P. Jones, Supervisor, 1st Grade, is transferred from the Central Provinces to Oudh.

No. 206.

Mr. W. McCracken, Accountant, 3rd Grade, Mysore, is removed from the Public Works Department.

C. H. DICKENS, Col., R. A.,
Secy. to the Govt. of India.

Great Trigonometrical Survey of India.

NOTIFICATION.

Calcutta, the 24th July 1867.

No. 24.

The following promotion is made with effect from 1st August:—

Mr. J. Macdougall, Sub-Assistant of the 4th Grade, to be Sub-Assistant of the 3rd Grade.

J. T. WALKER, Lieut.-Col., R. E.,
Supdt., G. T. Survey of India.

SILVER BALANCE IN THE MINT.

Balance of Bullion under assay, or remaining to be assayed, on the morning of the 15th July 1867 ... 13,08,167
15th July 1867, tendered ... 1,14,918

Certificates issued ... 14,23,080
... 2,06,401

Balance ... 12,16,679
16th July 1867, tendered ... 29,978

Certificates issued ... 12,46,652
... 1,58,188

Balance ... 10,88,464
17th July 1867, tendered ... 7,761

Certificates issued ... 10,96,225
... 1,79,194

Balance ... 9,17,081
18th July 1867, tendered ... 8,480

Certificates issued ... 9,20,401
... 1,31,657

Balance ... 7,88,834
19th July 1867, tendered ... 1,350

Certificates issued ... 7,90,184
... 68,232

Balance ... 7,21,952
20th July 1867, tendered ...

Certificates issued ... 7,21,952
... 2,09,094

Balance ... 5,12,858

Deduct difference in value between tender and certificates ... 7,093

Balance of bullion under assay, or remaining to be assayed ... 5,05,760

Note.—Value of silver remaining for coinage at end of week in the Mint ... 31,31,674

Deduct value of silver appertaining to the Currency Department... 27,61,717

Balance ... 3,69,957

CALCUTTA MINT, } J. A. BALLARD,
The 23rd July 1867. } Offg. Mint Master.